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FEDERAL REGISTER

Vol. 79 Tuesday,

No. 246 December 23, 2014

Pages 76865–77356

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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The President

Executive Order 13684 of December 18, 2014

Establishment of the President's Task Force on 21st Century Policing

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to identify the best means to provide an effective partnership between law enforcement and local communities that reduces crime and increases trust, it is hereby ordered as follows:

Section 1. *Establishment.* There is established a President's Task Force on 21st Century Policing (Task Force).

Sec. 2. *Membership.* (a) The Task Force shall be composed of not more than eleven members appointed by the President. The members shall include distinguished individuals with relevant experience or subject-matter expertise in law enforcement, civil rights, and civil liberties.

(b) The President shall designate two members of the Task Force to serve as Co-Chairs.

Sec. 3. *Mission.* (a) The Task Force shall, consistent with applicable law, identify best practices and otherwise make recommendations to the President on how policing practices can promote effective crime reduction while building public trust.

(b) The Task Force shall be solely advisory and shall submit a report to the President by March 2, 2015.

Sec. 4. *Administration.* (a) The Task Force shall hold public meetings and engage with Federal, State, tribal, and local officials, technical advisors, and nongovernmental organizations, among others, as necessary to carry out its mission.

(b) The Director of the Office of Community Oriented Policing Services shall serve as Executive Director of the Task Force and shall, as directed by the Co-Chairs, convene regular meetings of the Task Force and supervise its work.

(c) In carrying out its mission, the Task Force shall be informed by, and shall strive to avoid duplicating, the efforts of other governmental entities.

(d) The Department of Justice shall provide administrative services, funds, facilities, staff, equipment, and other support services as may be necessary for the Task Force to carry out its mission to the extent permitted by law and subject to the availability of appropriations.

(e) Members of the Task Force shall serve without any additional compensation for their work on the Task Force, but shall be allowed travel expenses, including per diem, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

Sec. 5. *Termination.* The Task Force shall terminate 30 days after the President requests a final report from the Task Force.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(c) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the ''Act'') may apply to the Task Force, any functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Attorney General.

THE WHITE HOUSE,
December 18, 2014.

[FR Doc. 2014–30195
Filed 12–22–14; 8:45 am]
Billing code 3295–F5

Rules and Regulations

Federal Register

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

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Commodity Credit Corporation

7 CFR Part 1470

[Docket No. NRCS–2014–0008]

RIN 0578–AA63

Conservation Stewardship Program (CSP) Interim Rule

AGENCY: Natural Resources Conservation Service (NRCS) and the Commodity Credit Corporation (CCC), United States Department of Agriculture.

ACTION: Interim final rule; extension of comment period.

SUMMARY: NRCS and CCC published an interim final rule amending the existing regulation for the Conservation Stewardship Program with request for comment, with a comment period ending January 5, 2015. This document extends the comment period.

DATES: The comment period for the interim final rule for CSP (79 FR 65836, Nov. 5, 2014) is hereby extended until January 20, 2015.

ADDRESSES: You may submit comments (identified by Docket No. NRCS–2014–0008) using one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments for Docket No. NRCS–2014–0008.
- U.S. mail or hand delivery: Public Comments Processing, Attn: Docket No. NRCS–2014–0008, Regulatory and Agency Policy Team, Strategic Planning and Accountability, U.S. Department of Agriculture, NRCS, 5601 Sunnyside Avenue, Building 1–1112D, Beltsville, Maryland 20705.

NRCS will post all comments on *http://www.regulations.gov.* If your comment includes your address, telephone number, email address, or other personal identifying information, please be aware that your entire comment, including this personal information, will be made publicly available. Do not include personal information with your comment submission if you do not want for it to be made public.

FOR FURTHER INFORMATION CONTACT: Director, Financial Assistance Programs Division, U.S. Department of Agriculture, NRCS, P.O. Box 2890, Washington, DC 20013–2890. Phone: (202) 720–1845. Fax: (202) 720–4265.

SUPPLEMENTARY INFORMATION: The Food, Conservation, and Energy Act of 2008 Act (2008 Act) amended the Food Security Act of 1985 (1985 Act) to establish the Conservation Stewardship Program (CSP) and authorize the program in FY 2009 through FY 2012. The Agricultural Appropriations Act of 2012 extended the program through FY 2014. The Agriculture Act of 2014 (the 2014 Act) reauthorizes and revises CSP, and extends the program through FY 2018. The purpose of CSP is to encourage producers to address priority resource concerns and improve and conserve the quality and condition of the natural resources in a comprehensive manner by:

(1) Undertaking additional conservation activities; and

(2) improving, maintaining, and managing existing conservation activities. The Secretary of Agriculture delegated authority to the Chief, NRCS, to administer CSP.

This action extends the comment period on the Interim Rule published on November 5, 2014, to ensure that the public has sufficient time to comment on the Interim Rule.

Signed this 15th day of December, 2014, in Washington, DC.

Jason A. Weller,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 2014–29982 Filed 12–22–14; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 742, and 774

[Docket No. 141107937–4937–01]

RIN 0694–AG33

Revision to the Export Administration Regulations: Controls on Electronic Commodities; Exports and Reexports to Hong Kong

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to expand controls for national security reasons and responds to public comments solicited by a Bureau of Industry and Security (BIS) notice of inquiry regarding the proper export control classification of certain electronic commodities and a type of radar. Specifically, in this rule, BIS amends the EAR to expand national security controls on certain electronic commodities controlled on the Commerce Control List (CCL) and to limit license exceptions for these items. This rule also expands license requirements for exports and reexports to Hong Kong of items controlled for national security reasons.

DATES: *Effective date:* This rule is effective December 23, 2014, except that the revision of the Related Controls paragraph under the List of Items Controlled section in ECCN 3E001, Supplement No. 1 to part 774, is effective December 30, 2014.

FOR FURTHER INFORMATION CONTACT: With respect to electronic components, contact Brian Baker, Office of National Security and Technology Transfer Controls, Electronics and Materials Division, at 202–482–5534. With respect to the U.S. government's export control policy for Hong Kong, contact Steven Schrader, Office of Nonproliferation and Treaty Compliance, Foreign Policy Division, at 202–482–1338.

SUPPLEMENTARY INFORMATION:

Background

This rule amends the Export Administration Regulations (EAR) to expand controls for national security reasons and responds to public comments solicited by a Bureau of

Industry and Security (BIS) notice of inquiry regarding the proper export control classification of certain electronic commodities and a type of radar. Specifically, in this rule, BIS amends the EAR to expand national security controls on certain electronic commodities controlled on the Commerce Control List (CCL) and to limit license exceptions for these items. This rule also expands license requirements for exports and reexports to Hong Kong of items controlled for national security reasons.

Electronic Components

Notice of Inquiry: Comment Summary and BIS Response

On July 1, 2014, BIS and the Department of State published final rules related to military electronics to take effect on December 30, 2014 (*see* 79 FR 37551 and 79 FR 37536) (herein the ''BIS July 1 Military Electronics Rule'' and the ''Department of State July 1 Military Electronics Rule''). On the same day, BIS published a notice of inquiry (79 FR 37547) seeking additional comments on the proper export control classification of microwave monolithic integrated circuit (MMIC) power amplifiers, discrete microwave transistors, and bi-static and multi-static radar that exploits greater than 125 kHz bandwidth and is lower than 2 GHz center frequency to passively detect or track using radio frequency (RF) transmissions (*e.g.,* commercial radio or television stations).

The notice of inquiry set forth the parameters adopted by the Wassenaar Arrangement 2013 plenary meeting for including MMIC power amplifiers and discrete microwave transistors on its Dual-Use List. Those parameters are found in Export Control Classification Number (ECCN) 3A001 paragraphs .b.2 and .b.3. The BIS July 1 Military Electronics Rule adopted additional parameters that, if met, would move the MMIC power amplifier or discrete microwave transistor from ECCN 3A001 to the ''600 series'' ECCN 3A611, and corresponding technology controls to 3E611. The notice sought comments on the appropriateness of the factors used to distinguish devices to be controlled under ECCN 3A611 from those controlled under ECCN 3A001.

The Department of State July 1 Military Electronics Rule placed bi-static and multi-static radar that exploits greater than 125 kHz bandwidth and is lower than 2 GHz center frequency to passively detect or track using radio frequency (RF) transmissions (*e.g.,* commercial radio or television stations) in USML Category XI(a)(3)(xxvii). The notice of inquiry sought comments on whether such radars are in fact in use in civil air traffic control, collision avoidance or weather radar in sufficient quantities to justify moving such radar to the CCL.

BIS received comments from eight parties. Six addressed MMIC power amplifiers or discrete microwave transistors or both. One commenter addressed passive radar and one commenter addressed the impact that regulations not administered by BIS have on his business.

Comments Related to Use of MMIC Power Amplifiers and/or Discrete Microwave Transistors in Civil Applications and Impact of 3A611 Control on U.S. Manufacturers

The commenters generally opined that classifications in the BIS July 1 Military Electronics Rule would increase costs and impose delays in shipping for U.S. manufacturers. The commenters cited a number of civil uses for MMIC power amplifiers and discrete microwave transistors that would be controlled in ECCN 3A611 under the BIS July 1 Military Electronics Rule to become effective on December 30, 2014. The civil uses that they cited are:

- Cellular communications applications including
  - Point to point radios
  - Cellular backhaul
  - LTE infrastructure
- WiMax
- Ground to satellite communications
  - Block up converters and solid state power amplifiers
  - Direct internet access via satellite for individual customers
  - Satellite access for WiFi aboard commercial airliners
  - Very small aperture terminals (VSAT) mainly for business data networks
- Test equipment for telecommunications networks
- Civilian radar (maritime, air traffic and weather).

Two commenters noted that civil applications are making greater use of two sets of frequency ranges than in the past. The commenters stated that cellular base stations are expanding into the 3.5 GHz band and that block up-converters and solid state amplifiers used in satellite based civil communications are expanding into the Ka band.

Four manufacturers of MMIC power amplifiers and/or discrete microwave transistors provided a list of specific amplifiers and transistors by model number that are sold for use in commercial products and that would become controlled in ECCN 3A611 by the BIS July 1 Military Electronics Rule on December 30, 2014.

One manufacturer of commercial telecommunications equipment confirmed that it has suppliers in the United States, Japan and Singapore for some of the MMIC power amplifiers and discrete microwave transistors that would be made subject to ECCN 3A611 by the BIS July 1 Military Electronics Rule.

Exacerbates an Existing Disadvantage

One commenter asserted that manufacturers located outside the United States have advantages over their U.S. counterparts even without the latter's being subjected to the 3A611 classification because the European Union has not revised its control lists to implement any Wassenaar Arrangement approved changes for three years. The expansion of MMIC power amplifier and discrete microwave transistor coverage adopted by the Wassenaar Arrangement December 2013 plenary meeting may not be implemented by the EU for months or years. (On August 4, 2014, the EAR was amended to include the expanded MMIC power amplifier and discrete microwave transistor coverage adopted by the December 2013 plenary meeting. *See* 79 FR 45287).

This commenter further asserted that manufacturers located outside the United States also have an advantage because other countries make decisions on license applications more quickly than the United States.

Increases the Number of Licenses Required

One manufacturer estimated that ECCN 3A611 would impose license requirements on exports that currently do not require a license for 39 products that it has been selling to commercial customers, in some cases for more than a decade. The customers for these products are largely global telecommunications equipment manufacturers. The manufacturer noted that manufacturers in other countries can supply MMIC power amplifiers and discrete microwave transistors that would meet the parameters of 3A611 but that are not subject to the EAR. This manufacturer stated that the license requirements of 3A611 would ''stop exports of these 39 products hindering its participation in three of our core commercial markets: Point to-point radio, satellite ground terminal (also called VSAT, for Very Small Aperture Terminal), and cellular base stations above 2.7 GHz.'' Because its customers for two of these products, point-to-point radio and the emerging 3.5 GHz cellular infrastructure (base stations), are largely

outside the United States, this manufacturer stated that without ability to export it ''would likely terminate current investments'' to develop MMIC power amplifiers and discrete microwave transistors for such products.

Another manufacturer reported that about 75% of its MMIC products that can currently be exported without a license would require a license to all destinations other than Canada under ECCN 3A611. It has obtained seven export licenses for these products in 18 months. With the new requirements, it estimates that it would need about 71 export licenses. Also, there will be a strong ''presumption of denial'' for all export license applications for exports of MMICs to China (PRC)—a factor that would make it impossible to use U.S. origin MMIC power amplifiers and discrete microwave transistors for telecommunications equipment made in China.

One telecommunications equipment manufacturer pointed out that its products, if made outside the United States, but incorporating even one U.S. origin 3A611 commodity, may not be exported to China because of the zero *de minimis* threshold and license application denial policy for 600 series items that apply to that country. The same piece of equipment manufactured outside the United States, if made with MMIC power amplifiers or discrete microwave transistors that also were made outside the United States, would not be subject to those restrictions. This same manufacturer also noted that if the same piece of equipment were manufactured in the United States, it would be classified under the ECCN that controls the piece of equipment even if that piece of equipment contained 600 series commodities. BIS notes that although a foreign made item containing a 600 series MMIC power amplifier or discrete microwave transistor would be subject to the EAR if being exported to China, its ECCN (and thus CCL based license requirements) would be based on the ECCN of the commodity, not that of its incorporated parts or components.

Criteria for Distinguishing Civil From Military MMIC Power Amplifiers and Discrete Microwave Transistors

Several commenters stated that power added efficiency (PAE) is not an appropriate criterion for identifying which MMIC power amplifiers and discrete microwave transistors are predominately used in military applications. In the words of one commenter: ''Employing PAE for distinguishing military from civil products seems based on an implicit assumption that military systems uniformly require higher efficiency than commercial operations. That assumption is not true.'' The commenters offered the following reasons for asserting that power added efficiency is not an appropriate metric for distinguishing military from civil MMIC power amplifiers and discrete microwave transistors.

- The PAE thresholds in ECCN 3A611 are too low. They would cover most Gallium Nitride (GaN) MMICs and transistors.
- PAE is not a precise measure. PAE of a single product can vary widely depending on a number of factors at the time of testing: bias condition, RF drive level, temperature, pulse width, duty cycle, and time period of operation.
- In industry practice, there is no standard consistent way to measure PAE. It can be measured at the optimal output load, at a single point of frequency, at a peak power level, or at an average point of normal operation.
- Many products are not rated for PAE because they will be used in applications where other measures make more sense. For example, in communications, a more relevant measure is saturated peak power (which needs to be very high to achieve the average level of operation that the customer needs).
- The PAE metric creates the same problems as ''average output power'' that was removed from ECCN 3A001 in accordance with the Wassenaar Arrangement 2013 plenary meeting changes to the Wassenaar Dual-Use List. It is not a metric that lends itself to clear or consistent definition in the RF industry, and as such should not be the basis for regulating RF products.
- Producers of commercial systems are demanding ever-higher efficiency to reduce system power consumption (which reduces operating costs), size, and weight.
- For power-intensive applications such as cellular base stations, equipment manufacturers goals typically exceed present capabilities of MMIC power amplifier and discrete microwave transistor technology and power amplifier topology.
- For the device, efficiency is determined by the device technology and frequency of operation. For the amplifier that uses the device, efficiency is determined by the topology and class of operation, load tuning, and bandwidth.

One commenter noted that a major base station manufacturer is asking for GaN drain efficiency at saturated output power to be greater than 70%.

Comments and Responses

Commenters offered several possible changes to the criteria for including MMIC power amplifiers or discrete microwave transistors in ECCN 3A611. BIS and the Departments of Defense and State reviewed the public comments and reassessed the appropriate level of control over those devices.

Comment 1: Two commenters recommended eliminating the power added efficiency values with respect to MMIC power amplifiers and increasing the threshold values for peak saturated power output in all frequency ranges to values that would be substantially higher than those specified in the BIS July 1 Military Electronics Rule. Another commenter recommended increasing the threshold values for fractional bandwidth, peak saturated power output and power added efficiency in all frequency ranges to values that would be substantially higher than the values in the BIS July 1 Military Electronics Rule. Two commenters recommended increasing the fractional bandwidth threshold values for all or some of the frequency ranges to levels that that would be substantially higher than those specified in the BIS July 1 Military Electronics Rule, but did not recommend changes to the other parameters.

Response 1: BIS did not adopt changes to the control based on fractional bandwidth, peak saturated power output, and/or power added efficiency because the agency found that attempting to designate some MMIC power amplifiers and discrete microwave transistors as civil and others as military based on those characteristics is impractical, and any resulting classification would not accurately reflect real world applications for those devices. Accordingly, this rule does not adopt any performance parameters for distinguishing military MMIC power amplifiers and discrete microwave transistors from their civil counterparts.

Nevertheless, MMIC power amplifiers and discrete microwave transistors, regardless of whether they meet the performance levels of ECCN 3A001 or the published, but not yet effective ECCN 3A611, are able to enhance the performance of certain military electronic systems in ways that can confer a military advantage and thus, the U.S. government needs to review not only proposed exports and reexports for use in military applications, but also those that are for use in applications that pose significant risk of diversion to a military application or enhancement of a potential adversary's military

capability. After consultation with the Departments of Defense and State, BIS has concluded that export and reexport of MMIC power amplifiers and discrete microwave transistors for civil telecommunication end uses do not impose such risks to an extent that would justify license requirements beyond those currently imposed on MMIC power amplifiers and discrete microwave transistors by ECCN 3A001. However, for other end uses, the risks involved necessitate prior U.S. Government review of transactions to guard against possible diversion to a military application or enhancement of a potential adversary's military capability. Accordingly, BIS has decided to require licenses for the export and reexport of all MMIC power amplifiers and discrete microwave transistors currently on the CCL for civil telecommunications uses to the same extent as license are required for exports and reexports of MMIC power transistors and discrete microwave transistors currently controlled in ECCN 3A001. For all other uses, BIS will impose a license requirement for all destinations other than Canada and will eliminate eligibility for most license exceptions.

Comment 2: One commenter recommended adding the phrase ''specially designed for a military application,'' which appears in ECCN 3A611.a, to paragraphs .b and .c of that ECCN (which control MMIC power amplifiers and discrete microwave transistors, respectively) as well.

Response 2: BIS also considered adding the phrase ''specially designed for a military application,'' which appears in ECCN 3A611.a, to paragraphs .b and .c of that ECCN as suggested by one commenter. Although the idea has merit, its application would not trigger a license requirement for all transactions into which the U.S. Government needs visibility to determine whether the transaction negatively affects United States security interests. Upon review, the agencies concluded that the manufacture and distribution of devices that support civil telecommunications networks and systems pose a very low risk. However, incorporation into military hardware is not the only activity into which the U.S. Government needs visibility. Some civil uses may also have heightened potential for diversion to military application.

Comment 3: Two commenters recommended adding a de-control note to ECCN 3A611 excluding products specifically designed for radio communications in a frequency band allocated by the ITU.

Response 3: BIS considered and decided not to adopt the proposal to exclude products specifically designed for radio communications in a frequency band allocated by the ITU. Frequency bands allocated by ITU may overlap the frequencies used by military devices.

Comments Regarding Bi-Static/Multistatic Passive Radar That Exploits Greater Than 125 kHz Bandwidth Is Lower Than 2 GHz Center Frequency To Passively Detect or Track Using Radio Frequency (RF) Transmissions (*e.g.,* Commercial Radio or Television Stations)

One commenter stated that it has an internal development project to evaluate the feasibility of applying bi-static radar to civil air traffic management applications. The bi-static radar approach could be used as an airborne collision avoidance system for civil unmanned aerial vehicles and could apply to general aviation aircraft. The radar described in the USML Category XI(a)(3)(xxvii) control could be installed at ground based locations to provide air traffic information about aircraft not equipped with transponders to aircraft operating around uncontrolled airports.

In the past, this commenter has classified its passive radar efforts under ECCN 5A001.g and the related technology under ECCN 5E001. Pursuant to the Department of State July 1 Military Electronics Rule, it will now have to classify the system under USML Category XI(a)(3)(xxvii). The commenter cited an on-going study to test the feasibility of using passive radar that relies on radio and television broadcast signals for air traffic control being conducted in the United Kingdom (UK) under the auspices of the United Kingdom Technology Strategy Board. The commenter stated that it did not know how this technology is classified in the United Kingdom, but indicated that if the UK does not classify it as a munition, the U.S. company could face an un-level playing field.

BIS has decided not to recommend to the Department of State that the revised USML Category XI scheduled to take effect on December 30 be further revised as a result of this comment. As described by the commenter, the technology is not ready for commercial application and thus need not be removed from the USML and added to the CCL.

Comment Unrelated to Regulations Administered by BIS

One commenter commented on the effect that rules governing the operation of unmanned aerial vehicles in the United States had on his business.

The operation of unmanned aerial vehicles in the United States is outside the scope of regulations administered by BIS. Therefore, BIS is taking no action in response to this comment.

Specific Changes Related to ECCN 3A001 Made by This Final Rule

For the reasons discussed above, this rule imposes a national security (NS column 1) control on certain MMIC power amplifiers and certain discrete microwave transistors, except those that are being exported or reexported for use in civil telecommunications applications, because the U.S. Government has determined that these commodities are at an increased risk of diversion to military applications or to activities that would enhance the military capabilities of potential adversaries, end users and end uses contrary to national security objectives. This rule also limits the availability of License Exceptions Limited Value Shipments (LVS), Shipments to Group B Countries (GBS), Additional Permissive Reexports (APR), and Strategic Trade Authorization (STA) for those commodities, and makes parallel changes to the technology related to these commodities for the same reason.

Specifically, this rule revises the controls paragraph in ECCN 3A001 to add a national security (NS column 1) control and a regional stability (RS column 1) control to these commodities, which prior to publication of this rule were controlled under NS column 2. (The anti-terrorism (AT column 1) control remains unchanged by this rule.) This rule revises the List Based License Exceptions paragraph in ECCN 3A001 to remove LVS and GBS eligibility, and to exclude these commodities from License Exception STA eligibility under the Special Conditions for STA paragraph. This rule also revises eligibility paragraphs in License Exceptions APR (§ 740.16(a) and (b)) and STA (§ 740.20(b)(2)) to exclude these commodities.

Technology for the development and production of these commodities is controlled by ECCN 3E001. This rule revises the List Based License Exceptions paragraph in ECCN 3E001 to remove eligibility for License Exception Technology and Software Under Restriction (TSR), and to exclude technology for these commodities from License Exception STA eligibility under the Special Conditions for STA paragraph. This rule does not remove license exception eligibility for technology controlled by ECCN 5E001.d. The fact that an item, such as

a MMIC, is used for telecommunications does not make that item a telecommunications item controlled in Category 5 of the CCL. There are additional special design modifications, frequency band limiters, and interfaces that are specific for telecommunications and that constitute the required technology controlled in 5E001.d MMIC power amplifiers for telecommunications. The design technology for the MMIC is controlled by ECCN 3E001. The additional technology required for telecommunications is controlled by ECCN 5E001. This rule adds notes to the Related Controls paragraphs in both ECCNs 3E001 and 5E001 to clarify the classifications of these technologies.

These actions will allow the U.S. Government to examine in advance the exports and reexports of MMIC power amplifiers and discrete microwave transistors that pose the greatest risk of diversion or enhancement of potential adversaries' military capabilities without imposing unnecessary licensing requirements on low risk transactions. Consistent with past practice, this rule provides a saving clause for items already en route to proceed and allows sufficient time to obtain a ''deemed'' export license for technology transfer to a foreign national employed in the United States (see ''Saving Clause'' below).

BIS intends to publish, in a future rulemaking, a corrections notice removing paragraphs .c and .d from ECCN 3A611 and paragraphs b.3 and b.4 from 3E611 as published in the BIS July 1 Military Electronics Rule.

Exports and Reexports to Hong Kong

Notwithstanding Hong Kong's comprehensive export control system, analysis of trade information indicates Wassenaar Arrangement controlled items exported from the United States to Hong Kong or reexported from abroad to Hong Kong are imported into Hong Kong and reexported from Hong Kong contrary to the requirements of Hong Kong's export control system (which requires import and export authorization from the Hong Kong Government) and the EAR.

Prior to publication of this rule, certain national security-controlled items (*i.e.,* controlled for NS column 2 on the CCL) did not have a destination-based license requirement for Hong Kong. This rule imposes such a requirement by placing an ''X'' in the box in the entry in the Commerce Country Chart for Hong Kong for NS column 2, and by removing text in § 742.4 (national security) that excepted Hong Kong from NS column 2 license requirements. A corresponding import license will be required from the Hong Kong government for these items, and this action will facilitate Hong Kong's ability to track their shipment and prevent diversion of these items. This rule is imposing this new license requirement to support the objectives of both the U.S. Government and the Hong Kong Government to prevent diversion of sensitive items. This rule also aligns the treatment of Hong Kong under the EAR with other Wassenaar Arrangement members' treatment of Hong Kong for items under Wassenaar controls.

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (*i.e.,* under the designator ''NLR'') as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on December 23, 2014, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before January 22, 2015. Any such items not actually exported or reexported before midnight, on January 22, 2015, require a license in accordance with this regulation.

''Deemed'' exports of ''technology'' and ''source code'' removed from eligibility for export under a license exception or without a license (under the designator ''NLR'') as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before February 23, 2015. Beginning at midnight on February 23, 2015, such ''technology'' and ''source code'' may no longer be released, without a license, to a foreign national subject to the ''deemed'' export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not a significant rule for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to increase by approximately 22 hours as a result of this rule (an estimated thirty additional license per year). You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Office of Management and Budget (OMB) by email to *OIRA_Submission@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)).

BIS is implementing this rule to protect U.S. national security or foreign policy interests. This rule imposes an export and reexport license requirement on certain items controlled for national security reasons destined to Hong Kong. This rule is imposing this new license requirement to support the objectives of both the U.S. Government and the Hong Kong Government to prevent diversion of sensitive items. This rule also removes certain license exception availability for some electronic components, such as MMIC power amplifiers and certain discrete microwave transistors, except those that are being exported or reexported for use in civil telecommunications applications, that BIS has determined are at risk for diversion or enhancement of potential adversaries' military capabilities. By requiring a license for end uses where that possibility of diversion or enhancement of potential adversaries' military capabilities is higher, the U.S. Government has the opportunity to evaluate the risk in advance of export or reexport. Immediate implementation will allow BIS to prevent exports of these items to users and for uses that pose a security threat to the United States or its allies. If BIS published a proposed rule soliciting notice and comment, the resulting delay in implementation would afford an opportunity to divert these items to users and uses that pose such a security threat, thereby undermining the purpose of the rule.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, 742, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

Supplement No. 1 to Part 738 [Amended]

■ 2. Supplement No. 1 to part 738 is amended by revising the entry for Hong Kong to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical & biological weapons			Nuclear nonproliferation		National security		Missile tech	Regional stability		Fire-arms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
		*		*		*		*		*	*		*			
Hong Kong	X	X	.....	X	.....	X	X	X	X	X	.....	X	.....	X	.....	.....
		*		*		*		*		*	*		*			

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PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 4. Section 740.16 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 740.16 Additional permissive reexports (APR).

* * * * *

(a) * * *

(2) The commodities being reexported are not controlled for NP, CB, MT, SI or CC reasons and are not military commodities described in ECCN 0A919 or cameras described in ECCN 6A003.b.3 (having the characteristics listed in 6A002.a.2.a or a.2.b), 6A003.b.4.b, 6A003.b.4.c, or commodities described in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications), 6A002.a.2.a, a.2.b, a.2.c, a.3.b.2.b, or a.3.g; and

* * * * *

(b) * * *

(1) Commodities that are not controlled for nuclear nonproliferation or missile technology reasons, described in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications), nor listed in paragraph (b)(2) or (b)(3) of this section may be reexported to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating country, or for reexport from such country in accordance with other provisions of the EAR.

* * * * *

■ 5. Section 740.20 is amended by adding paragraph (b)(2)(xi) to read as follows:

§ 740.20 License exception strategic trade authorization (STA).

* * * * *

(b) * * *

(2) * * *

(xi) License Exception STA may not be used for any commodity controlled by ECCN 3A001.b.2 or b.3 (except those

that are being exported or reexported for use in civil telecommunications applications), or any ''technology'' controlled by 3E001 for the ''production'' or ''development'' of commodities controlled by 3A001.b.2 or b.3.

* * * * *

PART 742—[AMENDED]

■ 6. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

■ 7. Section 742.4 is amended by revising the third sentence of paragraph (a) to read as follows:

§ 742.4 National security.

(a) *License requirements.* * * * A license is required to all destinations except Country Group A:5 (not including Argentina) (see Supplement No. 1 to part 740) and Mexico, for all items in ECCNs on the CCL that include NS column 2 in the Commerce Country Chart column of the ''License Requirements'' section except those cameras in ECCN 6A003.b.4.b that have a focal plane array with 111,000 or fewer elements and a frame rate of 60 Hz or less. * * *

* * * * *

PART 774—[AMENDED]

■ 8. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3A001 is amended by revising the Reasons for Control and the Control Table in the License Requirements section and the List Based License Exceptions section, and adding a Special Conditions for STA section before the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774—the Commerce Control List

* * * * *

3A001 Electronic components and ''specially designed'' ''components'' therefor, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, MT, NP, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to Microwave ''Monolithic Integrated Circuits'' (MMIC) power amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those 3A001.b.2 and b.3 items being exported or reexported for use in civil telecommunications applications.	NS Column 1
NS applies to entire entry.	NS Column 2
RS applies to Microwave ''Monolithic Integrated Circuits'' (MMIC) power amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those 3A001.b.2 and b.3 items being exported or reexported for use in civil telecommunications applications.	RS Column 1
MT applies to 3A001.a.1.a when usable in ''missiles''; and to 3A001.a.5.a when ''designed or modified'' for military use, hermetically sealed and rated for operation in the temperature range from below −54°C to above +125°C.	MT Column 1
NP applies to pulse discharge capacitors in in 3A001.e.2 and superconducting solenoidal electromagnets in 3A001.e.3 that meet or exceed the technical parameters in 3A201.a and 3A201.b, respectively.	NP Column 1
AT applies to entire entry.	AT Column 1

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A for MT or NP; N/A for Microwave ''Monolithic Integrated Circuits'' (MMIC) power amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those that are being exported or reexported for use in civil telecommunications applications
Yes for:

$1500: 3A001.c

$3000: 3A001.b.1, b.2 (exported or reexported for use in civil telecommunications applications), b.3 (exported or reexported for use in civil telecommunications applications), b.9, .d, .e, .f, and .g.

$5000: 3A001.a (except a.1.a and a.5.a when controlled for MT), and .b.4 to b.7.

GBS: Yes for 3A001.a.1.b, a.2 to a.13 (except .a.5.a when controlled for MT), b.2 (exported or reexported for use in civil telecommunications applications), b.8 (except for TWTAs exceeding 18 GHz), b.9., b.10, .g, and .h.

CIV: Yes for 3A001.a.3, a.7, and a.11.

Special Conditions for STA

STA: License Exception STA may not be used to ship any item in 3A001.b.2 or b.3, except those that are being exported or reexported for use in civil telecommunications applications, to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No.1 to part 740 of the EAR).

* * * * *

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3E001 is amended by revising the List Based License Exceptions section, the Special Conditions for STA, and the Related Controls paragraph under the List of Items Controlled section to read as follows:

3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A

TSR: Yes, except N/A for MT, and ''technology'' for the ''development'' or ''production'' of: (a) Traveling Wave Tube Amplifiers described in 3A001.b.8, having operating frequencies exceeding 19 GHz; (b) solar cells, coverglass-interconnect-cells or covered-interconnect-cells (CIC) ''assemblies,'' solar arrays and/or solar panels described in 3A001.e.4; (c) Microwave ''Monolithic Integrated Circuits'' (MMIC) power amplifiers in 3A001.b.2; and (d) discrete microwave transistors in 3A001.b.3.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment specified by ECCNs 3A002.g.1 or 3B001.a.2 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR). License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of components specified by ECCN 3A001.b.2 or b.3 to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of certain ''space-qualified'' atomic frequency standards described in Category XV(e)(9), MMICs described in Category XV(e)(14), and oscillators described in Category XV(e)(15) of the USML are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3E101, 3E201 and 9E515. (2) ''Technology'' for ''development'' or ''production'' of Microwave ''Monolithic Integrated Circuits'' (MMIC) power amplifiers in 3A001.b.2 is controlled in this ECCN 3E001; 5E001.d refers only to that additional ''technology'' ''required'' for telecommunications.

* * * * *

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5, ECCN 5E001 is amended by revising the Related Controls paragraph under the List of Items Controlled section to read as follows:

5E001 ''Technology'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: (1) See also 5E101, 5E980 and 5E991. (2) ''Technology'' for ''development'' or ''production'' of Microwave ''Monolithic Integrated Circuits'' (MMIC) power amplifiers that meet the control criteria given at 3A001.b.2 is controlled in 3E001; 5E001.d refers only to that additional ''technology'' ''required'' for telecommunications.

* * * * *

Dated: December 12, 2014.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2014–29686 Filed 12–22–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 141119982–4982–01]

RIN 0694–AG40

Clarification to Scope of Certain ''600 series'' Export Control Classification Numbers (ECCNs)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule revises six Export Control Classification Numbers (ECCNs) to clarify that they do not control certain basic parts, components, accessories and attachments because those basic parts, components, accessories and attachments are controlled in a new ECCN created by a rule published on July 1, 2014 to be effective on December 30, 2014. This rule also removes controls on certain monolithic microwave integrated circuit (MMIC) power amplifiers and discrete microwave transistors and related technology. These controls are no longer necessary because two other rules published after July 1, 2014, provide appropriate controls on those items. This rule also clarifies the application of ''specially designed'' to controls published on July 1, 2014 that would apply to printed circuit boards, populated circuit card assemblies and multichip modules to reduce the possibility of confusion. Finally, this rule revises three of the amendatory instructions in the final rule published on July 1, to avoid negating changes to the Export Administration Regulations that became effective after that date.

DATES: This rule is effective December 30, 2014.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, *william.arvin@bis.doc.gov,* 202–482–2440.

SUPPLEMENTARY INFORMATION:

Background

Affirming Scope of Antiterrorism License Requirement in ECCN 3A611.y

As part of the Administration's Export Control Reform Initiative, BIS has added to the Commerce Control List several ''600 series'' ECCNs to control items of a military nature that the President has determined no longer warrant control on the United State Munitions List. The ''600 series'' ECCNs are identified by the numeral ''6'' as their third character. Many ''600 series'' ECCNs have a paragraph designated as paragraph .x that imposes license requirements on unspecified parts, components, accessories and attachments specially designed for a specified set of items, unless those parts, components, accessories or attachments are enumerated on the USML or specified in ECCNs listed in that .x paragraph. Many ''600 series'' ECCNs also have a paragraph designated as paragraph .y, which specifies items to which only the antiterrorism (AT) reason for control applies. Items covered by the .x paragraphs require a license for all destinations except Canada unless a license exception is available. Items covered by .y paragraphs require a license for only Cuba, Iran, North Korea, Sudan, Syria, the People's Republic of China, Russia, and Venezuela.

In response to a proposed rule—Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (77 FR 70945, November 28, 2012)—one commenter expressed a belief that placing .y paragraphs in separate ECCNs would lead to inconsistent classifications; for example, in some ECCNs indicator lights appeared in the .y paragraph but not in other ECCNs. In response, BIS, *inter alia,* published a second proposed rule and solicited comments on three specific ideas for organizing the controls that had been set forth in the .y paragraphs (78 FR 45026, 45034, July 25, 2013). Those ideas were: (1) Creating separate ECCN-specific .y paragraphs; (2) creating a single list of ''600 series'' items that would be subject only to the antiterrorism and China license requirements; and (3) establishing a classification request procedure whereby a ''600 series'' item could be designated as subject only to antiterrorism and China license requirements, but eliminate the .y listings from the regulations or remove all .y lists completely.

After reviewing the comments on that proposal, BIS published a final rule (79

FR 37551, 37560, July 1, 2014) (hereinafter ''the Military Electronics Final Rule'') in which ECCN 3A611 contained a .y paragraph that imposes a license requirement to the eight destinations noted above (Cuba, Iran, North Korea, Sudan, Syria, the People's Republic of China, Russia, and Venezuela) for any of the 35 commodities listed therein, even in instances where the commodities are specially designed for something in a ''600 series'' ECCN other than 3A611. For example, a grounding strap that is specially designed for an ECCN 9A610 aircraft would be classified as ECCN 3A611.y and subject to the same license requirements as other .y items because grounding straps are specified in ECCN 3A611.y and are not specified in any paragraph of ECCN 9A610. BIS explained this policy in its response to Comment 26 set forth in the preamble of the Military Electronics Final Rule. That comment reads as follows:

> One commenter stated that its connectors that currently are classified under USML Category XI(c) would transfer to 3A611.y.3. The commenter noted that the problem with the 3A611.y text is that it states that it is 'for a commodity subject to control in this entry and not elsewhere specified in any ''600 series'' ECCN.' Thus, an electrical connector that is 'specially designed' for military aircraft equipment currently under USML Category VIII, would be classified under ECCN 9A610.x.

BIS' response stated:

> In this final rule, ECCN 3A611.y applies to parts, components, accessories and attachments that are 'specially designed' for a commodity subject to control in a '600 series' ECCN and not elsewhere *specified* in any '600 series' ECCN, and includes in its list of commodities electrical connectors. Thus, if the connectors in fact are moved from the USML to the CCL and are not 'specified in another ''600 series'' ECCN,' they are controlled by ECCN 3A611.y.

See 79 FR at 37560 (emphasis added.)

Nevertheless, since the Military Electronics Final Rule was published, BIS has received questions and comments indicating that, based on text in ECCN 9A610.x, some readers are confused about the scope of ECCN 3A611.y. ECCN 9A610.x reads as follows: '''Parts,' 'components,' 'accessories,' and 'attachments' that are 'specially designed' for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified on the USML or in ECCN 9A610.y.'' Readers noted that the text of paragraph .x explicitly excludes commodities specified in ECCN 9A610.y, but does not exclude commodities specified in ECCN 3A611.y. This omission led those readers to conclude incorrectly that, for example, a ground strap or electrical connector is controlled in ECCN 9A610.x (and subject to broad geographic license requirements that apply to .x paragraphs in the ''600 series'') if the item is specially designed for an aircraft that is controlled in ECCN 9A610 or on the USML. BIS does not construe the broad expression '''specially designed' for . . . and not elsewhere specified . . .'' found in ECCN 9A610.x, as *specifying* the parts, components, accessories and attachments to which ECCN 9A610.x applies. BIS also believes that properly applying the ''Order of Review'' procedure set forth in Supplement No. 4 to part 774 of the EAR to such transactions leads to the conclusion that commodities specified in ECCN 3A611.y should be classified in that entry rather than in the broad and unspecific .x paragraphs. However, based on the questions it has received, BIS believes that clarification is desirable to reduce the possibility of confusion about the scope of ECCN 3A611.y.

Accordingly, this rule revises ECCN 9A610 so that its .x paragraph will specifically exclude commodities specified in ECCN 3A611.y. This rule makes those same change to ECCNs 0A606, 1A613, 8A609, 8A620 and 9A619, which have .x paragraphs similar to those in ECCN 9A610. This rule also makes non-substantive changes to the .x paragraphs in those ECCNs to add clarity through parallel construction.

Removing Unnecessary Text From ECCNs 3A611 and 3E611

The Military Electronics Final Rule, which becomes effective December 30, 2014, added ECCN 3A611 to control, among other things, certain monolithic microwave integrated circuit (MMIC) power amplifiers (3A611.c) and discrete microwave transistors (3A611.d) based on performance parameters that distinguished them from the MMIC power amplifiers and discrete microwave transistors that are controlled under ECCN 3A001.b.2 and .b.3, respectively. This rule would remove and reserve paragraphs .c and .d. because BIS published two other rules, discussed below, imposing license requirements on these devices under ECCN 3A001 since publication of the Military Electronics Final Rule. As a result, the devices' inclusion in ECCN 3A611 is unnecessary.

The first rule, entitled ''Wassenaar Arrangement 2013 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports; and Extension of Fly-by-Wire Technology and Software Controls'' (79 FR 45288, August 4, 2014), expanded the frequency ranges covered by ECCN 3A001.b.2 and .b.3 to match ECCN 3A611.c and .d. The second rule, entitled ''Revision to the Export Administration Regulations: Controls on Electronic Commodities; Exports and Reexports to Hong Kong,'' which is being published simultaneously with this rule, imposed license requirements on MMIC power amplifiers and discrete microwave transistors specified in ECCN 3A001 for all destinations except Canada unless the amplifier or transistor is being exported or reexported for civil telecommunications use. That rule also reduced the availability of license exceptions. Those actions will allow the U.S. Government to examine in advance the exports and reexports of MMIC power amplifiers and discrete microwave transistors that pose the greatest risk of diversion or enhancement of potential adversaries' military capabilities without imposing unnecessary licensing requirements on low risk transactions. With these changes, the inclusion of MMIC power amplifier and discrete microwave transistors in a ''600 series'' ECCN is unnecessary.

In addition, this rule removes references to MMIC power amplifiers and discrete microwave transistors from ECCN 3E611 because, upon publication of this rule, MMIC power amplifiers and discrete microwave transistors will not be controlled in ECCN 3A611, and it is not necessary to control technology for their development or production in ECCN 3E611. Such technology will be controlled in ECCN 3E001 and will require a license to all destinations other than Canada.

Clarifying Application of the Definition of ''Specially Designed'' to Printed Circuit Boards, Populated Circuit Card Assemblies and Multichip Modules

ECCN 3A611, as described in the Military Electronics Final Rule, includes printed circuit boards and populated circuit card assemblies for which the layouts are specially designed for ''600 series'' items. ECCN 3A611 also includes multichip modules for which the pattern or layout is specially designed for ''600 series'' items. Since the Military Electronics Final Rule was published, BIS has received questions regarding how to apply the specially designed definition to printed circuit boards, populated circuit card assemblies, and multichip modules. Specifically, BIS has been asked how to apply ECCN 3A611, which ties the definition of ''specially designed'' to

one characteristic of printed circuit boards and populated circuit card assemblies (*i.e.,* the layout) and two characteristics of multichip modules (*i.e.,* the pattern or layout), given that the definition of ''specially designed'' appears to require evaluation of a part, component, accessory or attachment as a whole. In specifying ''layout'' and ''pattern,'' BIS intended that only those characteristics of a printed circuit board, populated circuit card assembly or multichip module need be evaluated to determine whether those items are specially designed for purpose of applying the specially designed definition. The questions BIS has received since the publication of the Military Electronics Final Rule indicate that clarification of this point is needed to prevent confusion. Therefore, this rule adds a note to ECCN 3A611 explicitly stating that, when evaluating printed circuit boards and populated circuit card assemblies, the layout of the board or assembly is the only characteristic that need be evaluated for purposes of specially designed. Similarly, when evaluating multichip modules, the pattern and layout of the module are the only characteristics that need be evaluated under the specially designed definition.

Revisions To Prevent Negation of EAR Amendments That Became Effective After July 1, 2014

This rule revises three amendatory instructions that appeared in the Military Electronics Final Rule. Without these revised instructions, on its effective date of December 30, the Military Electronics Final Rule would negate EAR provisions that became effective after that rule's July 1, 2014 publication.

First, this rule revises the amendatory instruction for Related Controls paragraph of ECCN 3A001. That instruction, made in the Military Electronics Final Rule at 79 FR 37569, must be revised to avoid negating the additions to that paragraph made effective on November 10, 2014 by the rule ''Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)'' (79 FR 27418, 27438, May 13, 2014). Specifically, this rule adds references in the Related Controls paragraph of ECCN 3A001 to: Category XV of the USML for certain space qualified electronics; Category XI for certain application specific integrated circuits that are subject to the ITAR; and ECCNs 3A101, 3A201, 3A611, 3A991 and 9A515.

Secondly, this rule revises the amendatory instruction for the License Requirements section of ECCN 4A003 that appeared in the Military Electronics Final Rule at 79 FR 37573 to avoid negating changes to that section that the rule ''Wassenaar Arrangement 2013 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports; and Extension of Fly-by-Wire Technology and Software Controls'' (79 FR 45288, August 4, 2014) made effective on August 30, 2104. Specifically, this rule replaces the term ''3.0 Weighted TeraFLOPS'' with the term ''8.0 Weighted TeraFLOPs,'' replaces the term ''Note 1'' with the term ''Note'' and removes Note 2.

Lastly, this rule revises the amendatory instruction for the Related Controls paragraph of ECCN 5A001 that appeared in the Military Electronics Final Rule at 79 FR 37573 to conform to the changes made effective on November 10, 2014 to that paragraph by the rule ''Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)'' (79 FR 27438, May 13, 2014). Specifically, this rule removes text concerning telecommunication equipment used in satellites from Related Control Note 1.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined not to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This regulation relates to a collection approved by OMB under control number 0694–0088 Simplified Network Application Processing System (SNAP) and the Multipurpose Export License Application, which carries a current annual burden estimate of 31,833 hours. BIS believes that this rule will not materially change the burden imposed by this collection.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department of Commerce finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act otherwise requiring prior notice and the opportunity for public comment because it is unnecessary and contrary to the public interest. This rule adds text to six ECCNs alerting readers to a change related to those ECCNs that will be implemented in a final rule published on July 1, 2014 that will become effective on December 30, 2014. The change itself was included in a final rule for which two proposed rules solicited public comment. This rule also removes text from two ECCNs created by that same final rule because, in accordance with two recently published rules, the items covered by those ECCNs will be controlled elsewhere in the EAR. Retaining the paragraphs would result in inconsistent license requirements. This rule also adds a note to one ECCN clarifying how the specially designed definition applies to printed circuit boards, populated circuit card assemblies, and multichip modules

license requirements. This change is being made in response to questions from the public seeking clarifications. By making these changes, BIS is decreasing the likelihood of continued public confusion on the issue. Finally, this rule revises three amendatory instructions in a rule that was published on July 1, 2014 and that will become effective on December 30, to avoid negating provisions of the EAR that became effective after July 1, 2014. These three revised instructions merely preserve existing regulatory text without making substantive changes to the July 1, 2014 rule.

The Department of Commerce finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness because the changes made by this would promote clarity in the regulations. The changes made by this rule would remove obsolete text, incorporate language to clarify certain provisions, and to implement housekeeping changes to prevent negating provisions of the EAR that became effective after July 1, 2014.

Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 2. In Supplement No. 1 to part 774, Category 0, ECCN 0A606, ''List of Items Controlled Section,'' the ''Items'' paragraph is amended by revising paragraph x. to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A606 Ground vehicles and related commodities, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: * * *

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 0A606 (except for 0A606.b or 0A606.y) or a defense article enumerated or otherwise described in USML Category VII and not elsewhere specified on the USML, in 0A606.y or 3A611.y.

* * * * *

■ 3. In Supplement No. 1 to part 774, Category 1, ECCN 1A613, ''List of Items Controlled Section,'' the ''Items'' paragraph is amended by revising paragraph x. to read as follows:

1A613 Armored and protective ''equipment'' and related commodities, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: * * *

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 1A613 (except for 1A613.y) or a defense article enumerated or otherwise described in USML Category X, and not elsewhere specified on the USML or in 3A611.y.

* * * * *

■ 4. In supplement No. 1 to part 774, revise the Related Controls in the ''List of Items Controlled'' section of ECCN 3A001 to read as follows:

3A001 Electronic components and ''specially designed'' ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: (1) See Category XV of the USML for certain ''space-qualified'' electronics and Category XI of the USML for certain ASICs ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) See also 3A101, 3A201, 3A611, 3A991, and 9A515.

* * * * *

■ 5. In Supplement No. 1 to part 774, Category 3, ECCN 3A611 is amended by:

■ a. Removing and reserving paragraphs c. and d. from the ''Items'' paragraph in the ''List of Items Controlled'' section.

■ b. Adding at the end of the entry a note.

The addition to read as follows:

3A611 Military electronics, as follows (see List of Items Controlled).

* * * * *

Note to ECCN 3A611: When applying the ''specially designed'' definition to determine whether a printed circuit board, populated circuit card assembly or multichip module is controlled by paragraph .g, .h, .y.15 or .y.16 of this entry, the layout of the board or assembly and the pattern and layout of the module are the only characteristics that need be evaluated under the ''specially designed'' definition.

■ 6. In Supplement No. 1 to part 774, Category 3, ECCN 3E611, ''List of Items Controlled Section,'' the ''Items'' paragraph is amended by removing paragraphs b.3. and b.4.

■ 7. In supplement No. 1 to part 774, amend ECCN 4A003 by revising the ''License Requirements'' section to read as follows:

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, as follows (see List of Items Controlled) and ''specially designed'' ''components'' therefor.

License Requirements

Reason for Control: NS, MT, CC, AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
NS applies to 4A003.b and .c.	NS Column 1
NS applies to 4A003.e and .g.	NS Column 2
MT applies to 4A003.e when the parameters in 3A101.a.2.b are met or exceeded.	MT Column 1
CC applies to ''digital computers'' for computerized finger-print equipment.	CC Column 1
AT applies to entire entry (refer to 4A994 for controls on ''digital computers'' with a APP >0.0128 but ≤8.0 WT).	AT Column 1

Note: *For all destinations, except those countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with an ''Adjusted Peak Performance'' (''APP'') not exceeding 8.0 Weighted TeraFLOPS (WT) and for ''electronic assemblies'' described in 4A003.c that are not capable of exceeding an ''Adjusted Peak Performance'' (''APP'') exceeding 8.0 Weighted TeraFLOPS (WT) in aggregation, except certain transfers as set forth in § 746.3 (Iraq).*

* * * * *

■ 8. In supplement No. 1 to part 774, amend ECCN 5A001 by revising the ''Related Controls'' paragraph of the ''List of Items Controlled'' section, to read as follows:

5A001 Telecommunications systems, ''equipment,'' ''components'' and

''accessories,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: 1. See USML Category XI for controls on direction-finding ''equipment'' including types of ''equipment'' in ECCN 5A001.e and any other military or intelligence electronic ''equipment'' that is ''subject to the ITAR.'' 2. See USML Category XI(a)(4)(iii) for controls on electronic attack and jamming ''equipment'' defined in 5A001.f and .h that are subject to the ITAR. 3. See also ECCNs 5A101, 5A980, and 5A991.

* * * * *

■ 9. In Supplement No. 1 to part 774, Category 8, ECCN 8A609, ''List of Items Controlled Section,'' the ''Items'' paragraph is amended by revising paragraph x. to read as follows:

8A609 Surface vessels of war and related commodities (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: * * *

x. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 8A609 (except for 8A609.y) or a defense article enumerated or otherwise described in USML Category VI and not elsewhere specified on the USML, in 8A609.y or 3A611.y.

* * * * *

■ 10. In Supplement No. 1 to part 774, Category 8, ECCN 8A620, ''List of Items Controlled Section,'' the ''Items'' paragraph is amended by revising paragraph x. to read as follows:

8A620 Submersible vessels, oceanographic and associated commodities (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: * * *

x. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 8A620 (except for 8A620.b or 8A620.y) and not elsewhere specified on the USML, in 8A620.y or 3A611.y.

* * * * *

■ 11. In Supplement No. 1 to part 774, Category 9, ECCN 9A610, ''List of Items Controlled Section,'' the ''Items'' paragraph is amended by revising paragraph x. to read as follows:

9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: * * *

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 9A610 (except for 9A610.y) or a defense article enumerated or otherwise described in USML Category VIII and not elsewhere specified on the USML, in 9A610.y or 3A611.y.

* * * * *

■ 12. In Supplement No. 1 to part 774, Category 9, ECCN 9A619, ''List of Items Controlled Section,'' the ''Items'' paragraph is amended by revising paragraph x. to read as follows:

9A619 Military gas turbine engines and related commodities (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: * * *

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 9A619 (except for ECCN 9A619.c or 9A619.y) or a defense article enumerated or otherwise described in USML Category XIX and not elsewhere specified on the USML, in 9A619.y or 3A611.y.

* * * * *

Dated: December 12, 2014.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2014–29674 Filed 12–22–14; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–9692; 34–73868; 39–2499; IC–31383]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual and related rules to reflect updates to the EDGAR system. The updates are being made primarily to make available a new exhibit type EX–1.01 and disallow Exhibit type EX–1.02 on EDGARLink Online for submission form types SD and SD/A, to implement the ''Calendar Year Ending'' value validation rule for form type 13H–A, to require Transfer Agents with file numbers in the range 085–15000 to 085–19999 to select ''Comptroller of the Currency'' as the registrant's appropriate regulatory agency on Form TA–2 and its amendment, and to update the EDGAR Portal to include a new option, ''Do you need more information?'' that links to the 'Guidance for Filers and FAQs' section on the SEC's Public Web site (*www.sec.gov*). The EDGAR system is scheduled to be upgraded to support this functionality on December 15, 2014.

DATES: Effective December 23, 2014 The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of December 23, 2014.

FOR FURTHER INFORMATION CONTACT: In the Division of Corporation Finance, for questions concerning the revisions for Form SD or SD/A, contact Heather Mackintosh at (202) 551–3600; in the Division of Trading and Markets, for questions concerning the revisions for Form 13H–A and TA–2, contact Kathy Bateman at (202) 551–4345, and in the Office of Information Technology, contact Tammy Borkowski at (202) 551–7208.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume I and Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Web site.

The revisions to the Filer Manual reflect changes within Volume I entitled EDGAR Filer Manual, Volume I: ''General Information,'' Version 19 (December 2014), and Volume II entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 29 (December 2014). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers may consult the Filer Manual in conjunction with our rules

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on October 20, 2014. *See* Release No. 33–9668 (October 29, 2014) [79 FR 64311].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

governing mandated electronic filing when preparing documents for electronic submission.[3]

The EDGAR system will be upgraded to Release 14.3 on December 15, 2014 and will introduce the following changes.

A new exhibit type EX–1.01 will be available on EDGARLink Online for submission form types SD and SD/A. Filers that are filing a Conflict Minerals Report should specify Item 1.02 on a Form SD or SD/A submission and attach the Conflict Minerals Report as EX–1.01 in official ASCII or HTML format. Exhibit type EX–1.02, which was previously allowed on a SD and SD/A submission, will no longer be available on EDGARLink Online or accepted by EDGAR.

Submission form type 13H–A will restrict the ''Calendar Year Ending'' value to a year that is prior to the current calendar year.

The EDGAR automated submission notification email for a 13H–A submission form type will inform the filer that the 13H–A submission received was for an annual filing or a combined annual and fourth quarter filing.

Form TA–2 and its amendment will be updated to remove ''Office of Thrift Supervision'' as an option for Item 3(a)—Registrant's appropriate regulatory agency (ARA). Filers must download the latest template to file Form TA–2 and its amendment using the 'EDGARLite Submission Templates' link on the EDGAR OnlineForms Management Web site.

Transfer Agents with file numbers in the range 085–15000 to 085–19999 must now select ''Comptroller of the Currency'' instead of ''Office of Thrift Supervision'' as the registrant's appropriate regulatory agency on Form TA–2 and its amendment. In addition, EDGAR will suspend filer-constructed submissions of Form TA–2 and its amendment with ''Office of Thrift Supervision'' (OTS) as the value for the registrant's appropriate regulatory agency. Please refer to the ''EDGAR Form TA–2 Technical Specification'' document for details.

Validations for Item 5 of Form TA–2 and its amendment will be updated as follows. If the response for Item 2(a) is ''Some'' or ''None'' and the value for Item 5(a) is equal to zero, then the total of Items 5d(i) to 5d(vi) must be equal to 0%; if it is greater than zero, then the total of Items 5d(i) to 5d(vi) must be equal to 100%.

The EDGAR automated submission notification emails for Form D submissions will include the web address of the Electronic Filing Depository (*https://efdnasaa.org*) to enable Form D filers fulfill their state filing obligations.

The EDGAR Portal will be updated to include a new option, ''Do you need more information?'' that links to the 'Guidance for Filers and FAQs' section on the SEC's Public Web site (*www.sec.gov*). In addition, the 'Access Notes' section on the EDGAR Portal will include contact information for EDGAR Filer Support.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual will be available for Web site viewing and printing; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You may also obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Since the Filer Manual and the corresponding rule changes relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[4] It follows that the requirements of the Regulatory Flexibility Act[5] do not apply.

The effective date for the updated Filer Manual and the rule amendments is December 23, 2014. In accordance with the APA,[6] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 14.3 is scheduled to become available on December 15, 2014. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[7] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[8] Section 319 of the Trust Indenture Act of 1939,[9] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[10]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text Of The Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 19 (December 2014). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 29 (December 2014). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 4 (October 2014). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available for Web site viewing and printing; the address for the Filer Manual is *http://www.sec.gov/*

[3] *See* Release No. 33–9668 in which we implemented EDGAR Release 14.2. For additional history of Filer Manual rules, please see the cites therein.

[4] 5 U.S.C. 553(b).

[5] 5 U.S.C. 601–612.

[6] 5 U.S.C. 553(d)(3).

[7] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[8] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78o, 78w, and 78*ll.*

[9] 15 U.S.C. 77sss.

[10] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

info/edgar.shtml. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. You can also inspect the document 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.*

By the Commission.

Dated: December 17, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30041 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–3984; File No. S7–23–07]

RIN 3235–AL56

Temporary Rule Regarding Principal Trades With Certain Advisory Clients

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending rule 206(3)–3T under the Investment Advisers Act of 1940, a temporary rule that establishes an alternative means for investment advisers that are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Investment Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. The amendment extends the date on which rule 206(3)–3T will sunset from December 31, 2014 to December 31, 2016.

DATES: The amendments in this document are effective December 30, 2014 and the expiration date for 17 CFR 275.206(3)–3T is extended to December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Melissa S. Gainor, Senior Counsel, Sarah A. Buescher, Branch Chief, or Daniel S. Kahl, Assistant Director, at (202) 551–6787 or *IArules@sec.gov,* Investment Adviser Regulation Office, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting an amendment to temporary rule 206(3)–3T [17 CFR 275.206(3)–3T] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] that extends the date on which the rule will sunset from December 31, 2014 to December 31, 2016.

I. Background

On September 24, 2007, we adopted, on an interim final basis, rule 206(3)–3T, a temporary rule under the Investment Advisers Act of 1940 (the ''Advisers Act'') that provides an alternative means for investment advisers that are registered with us as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients.[1] The purpose of the rule was to permit broker-dealers to sell to their non-discretionary advisory clients, following the decision in *Financial Planning Association* v. *SEC,*[2] certain securities held in the proprietary accounts of their firms that might not be available on an agency basis, or might be available on an agency basis only on less attractive terms, while protecting clients from conflicts of interest as a result of such transactions.[3] In December 2009, we adopted rule 206(3)–3T as a final rule in the same form in which it was adopted on an interim final basis in 2007, except that we extended the rule's sunset date by one year to December 31, 2010.[4] We deferred final action on rule 206(3)–3T in December 2009 because we needed additional time to understand how, and in what situations, the rule was being used.[5] In both December 2010 and December 2012, we further extended the rule's sunset date, in each case for an additional two-year period.[6] We deferred final action on rule 206(3)–3T in 2010 in order to complete a study required by section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').[7] In 2012, we deferred final action on rule 206(3)–3T to further consider the findings, conclusions, and recommendations of the 913 Study and the comments we had received from interested parties.[8] In connection with each extension, we noted that our consideration of the regulatory requirements applicable to broker-dealers and investment advisers was ongoing and that an extension would allow the Commission to consider more broadly the regulatory requirements applicable to broker-dealers and investment advisers, including whether rule 206(3)–3T should be substantively modified, supplanted, or permitted to sunset.[9]

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[1] Rule 206(3)–3T [17 CFR 275.206(3)–3T]. All references to rule 206(3)–3T and the various sections thereof in this release are to 17 CFR 275.206(3)–3T and its corresponding sections. *See also Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2653 (Sep. 24, 2007) [72 FR 55022 (Sep. 28, 2007)] (''2007 Principal Trade Rule Release'').

[2] 482 F.3d 481 (D.C. Cir. 2007) (vacating rule 202(a)(11)–1 under the Advisers Act).

[3] *See* 2007 Principal Trade Rule Release, Sections I and VI.C.

[4] *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2965 (Dec. 23, 2009) [74 FR 69009 (Dec. 30, 2009)] (''2009 Extension Release''); *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2965A (Dec. 31, 2009) [75 FR 742 (Jan. 6, 2010)] (making a technical correction to the 2009 Extension Release).

[5] *See* 2009 Extension Release, Section II.c.

[6] *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3118 (Dec. 1, 2010) [75 FR 75650 (Dec. 6, 2010)] (proposing a two-year extension of rule 206(3)–3T's sunset provision) (''2010 Extension Proposing Release''); *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3128 (Dec. 28, 2010) [75 FR 82236 (Dec. 30, 2010)] (extending rule 206(3)–3T's sunset provision from December 31, 2010 to December 31, 2012) (''2010 Extension Release''); *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3483 (Oct. 9, 2012) [77 FR 62185 (Oct. 12, 2012)] (proposing a two-year extension of rule 206(3)–3T's sunset provision); *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3522 (Dec. 20, 2012) [77 FR 76854 (Dec. 31, 2012)] (extending rule 206(3)–3T's sunset provision from December 31, 2012 to December 31, 2014) (''2012 Extension Release'').

[7] Public Law 111–203, 124 Stat. 1376 (2010). Under section 913 of the Dodd-Frank Act, we were required to conduct a study and provide a report to Congress concerning the obligations of broker-dealers and investment advisers, including standards of care applicable to those intermediaries and their associated persons. Section 913 also authorizes us to promulgate rules concerning the legal or regulatory standards of care for broker-dealers, investment advisers, and persons associated with these intermediaries for providing personalized investment advice about securities to retail customers, taking into account the findings, conclusions, and recommendations of the study.

The study mandated by section 913 of the Dodd-Frank Act was prepared by the staff and delivered to Congress on January 21, 2011. *See Study on Investment Advisers and Broker-Dealers* (''913 Study'') (Jan. 21, 2011), available at *http://www.sec.gov/news/studies/2011/913studyfinal.pdf.* For a discussion regarding principal trading, *see* section IV.C.1.(b) of the 913 Study. *See also* Commissioners Kathleen L. Casey and Troy A. Paredes, *Statement by SEC Commissioners: Statement Regarding Study on Investment Advisers and Broker-Dealers* (Jan. 21, 2011), available at *http://www.sec.gov/news/speech/2011/spch012211klctap.htm* (opposing the release of the 913 Study to Congress and stating that more rigorous analysis is required before the Commission engages in any follow-on rulemaking).

[8] *See* 2012 Extension Release, Section II.

[9] *See id.;* 2010 Extension Release, Section II.

We have continued to consider the regulatory requirements applicable to broker-dealers and investment advisers. In 2013, we issued a request for data and other information, including quantitative data and economic analysis, relating to the benefits and costs that could result from alternative approaches regarding the standards of conduct and other obligations of broker-dealers and investment advisers.[10] The staff has received over 200 comment letters in response to the Request, several of which discussed rule 206(3)–3T, and Commissioners and the staff have held numerous meetings with interested parties.[11]

On August 12, 2014, we proposed to extend the date on which rule 206(3)–3T will sunset for a limited amount of time, from December 31, 2014 to December 31, 2016.[12] We received nine comment letters addressing our proposal.[13] Seven of these commenters generally supported extending rule 206(3)–3T for at least two years,[14] while two commenters opposed a two-year extension.[15] The comments we received on our proposal are discussed below. After considering each of the comments, we are extending the rule's sunset date by two years to December 31, 2016, as proposed.

II. Discussion

We are amending rule 206(3)–3T only to extend the rule's sunset date by two additional years.[16] We are not adopting any substantive amendments to the rule at this time. Absent further action by the Commission, the rule would sunset on December 31, 2014. We are adopting this extension because, as we discussed in the Proposing Release, we continue to believe that the issues raised by principal trading, including the restrictions in section 206(3) of the Advisers Act and our experiences with, and observations regarding, the operation of rule 206(3)–3T, should be considered as part of our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers in connection with the Dodd-Frank Act.[17]

Section 913 of the Dodd-Frank Act authorizes us to promulgate rules concerning, among other things, the legal or regulatory standards of conduct for broker-dealers, investment advisers, and persons associated with these intermediaries when providing personalized investment advice about securities to retail customers. Since the completion of the 913 Study in 2011, we have been considering the findings, conclusions, and recommendations of the study and the comments we have received from interested parties.[18] The Commission and its staff have continued to evaluate options regarding regulatory requirements applicable to broker-dealers and investment advisers, taking into account the 913 Study's recommendations, the views of investors and other interested market participants, potential economic and market impacts, and the information we received in response to the Request. Staff has also been conducting examinations of dual registrants and is assessing the impact to investors of the different supervisory structures and legal standards of conduct that govern the provision of brokerage and investment advisory services, which may help inform our considerations.[19] Our consideration of the regulatory requirements applicable to broker-dealers and investment advisers is ongoing. We will not complete our consideration of these issues before December 31, 2014, the current sunset date for rule 206(3)–3T.

If we permit rule 206(3)–3T to sunset on December 31, 2014, after that date investment advisers registered with us as broker-dealers that currently rely on rule 206(3)–3T would be required to comply with section 206(3)'s transaction-by-transaction written disclosure and consent requirements without the benefit of the alternative means of complying with these requirements provided by rule 206(3)–3T if they want to engage in principal trades with non-discretionary advisory account clients. This could limit the access of non-discretionary advisory clients of advisory firms that are registered with us as broker-dealers to certain securities.[20] In addition, firms may be required to make substantial changes to their disclosure documents, client agreements, procedures, and systems.

As noted above, seven commenters generally supported our proposal to extend rule 206(3)–3T, and two commenters opposed the two-year extension. Commenters who supported the extension cited the disruption to investors that would occur if the rule expired at this time, asserting that investors would lose access to the securities currently offered through principal trades, receive less favorable pricing on such securities, or be forced to open brokerage accounts if they wished to maintain access to certain

[10] *Duties of Brokers, Dealers, and Investment Advisers,* Investment Advisers Act Release No. 3558 (Mar. 1, 2013) [78 FR 14848 (Mar. 7, 2013)] (the ''Request'').

[11] *See Comments on Study Regarding Obligations of Brokers, Dealers, and Investment Advisers,* File No. 4–606, available at *http://sec.gov/comments/4-606/4-606.shtml. See e.g.,* Comment Letter of North American Securities Administrators Association, Inc. (Jul. 5, 2013) (''[T]he Commission should consider SEC Rule 206(3)–3T as part of future fiduciary standard rulemaking.'').

[12] *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3893 (Aug. 12, 2014), [79 FR 48709 (Aug. 18, 2014)] (''Proposing Release'').

[13] *See* Comment Letter of Chris Barnard (Aug. 22, 2014) (''Barnard Letter''); Comment Letter of Better Markets, Inc. (Sept. 17, 2014) (''Better Markets Letter''); Comment Letter of Consumer Federation of America (Sept. 17, 2014) (''Consumer Federation Letter''); Comment Letter of Financial Services Institute (Sept. 17, 2014) (''FSI Letter''); Comment Letter of Financial Services Roundtable (Sept. 16, 2014) (''FSR Letter''); Comment Letter of Jeffrey W. Lynn (Aug. 24, 2014) (''Lynn Letter''); Comment Letter of Thomas Michael Manis (Aug. 21, 2014) (''Manis Letter''); Comment Letter of Securities Industry and Financial Markets Association (''SIFMA'') (Sept. 17, 2014) (''SIFMA 2014 Letter''); Comment Letter of Wells Fargo Advisors, LLC (Sept. 17, 2014) (''Wells Fargo Letter''). We received one comment letter that did not directly address the issues in the proposal. *See* Comment Letter of J. Wayne-Lynn (Sept. 3, 2014). We also received one comment letter discussing Title IX of the Dodd-Frank Act (including section 913), but not specifically addressing the extension of the rule or principal trading. *See* Comment Letter of Norman B. Arnoff, Esq. and Paul A. Immerman, Esq. (Oct. 26, 2014).

[14] *See* Barnard Letter; FSI Letter; FSR Letter; Lynn Letter; Manis Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[15] *See* Better Markets Letter; Consumer Federation Letter.

[16] The rule includes a reference to an ''investment grade debt security,'' which is defined as ''a non-convertible debt security that, at the time of sale, is rated in one of the four highest rating categories of at least two nationally recognized statistical rating organizations (as defined in section 3(a)(62) of the Exchange Act).'' Rule 206(3)–3T(a)(2) and (c). Section 939A of the Dodd-Frank Act requires that we ''review any regulation issued by [us] that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and any references to or requirements in such regulations regarding credit ratings.'' Once we have completed that review, the statute provides that we modify any regulations identified in our review to ''remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness'' as we determine appropriate. We believe that the credit rating requirement in the temporary rule would be better addressed after the Commission completes its review of the regulatory standards of conduct that apply to broker-dealers and investment advisers. *See generally Report on Review of Reliance on Credit Ratings* (July 21, 2011), available at *http://www.sec.gov/news/studies/2011/939astudy.pdf* (staff study reviewing the use of credit ratings in Commission regulations).

[17] *See* Proposing Release, Section II.

[18] Section 913(f) of the Dodd-Frank Act requires us to consider the 913 Study in any rulemaking authorized by that section of the Dodd-Frank Act. *See also Comments on Study Regarding Obligations of Brokers, Dealers, and Investment Advisers,* File No. 4–606, available at *http://sec.gov/comments/4-606/4-606.shtml.*

[19] *See* National Exam Program, Office of Compliance Inspections and Examinations, *Examination Priorities for 2014* (Jan. 9, 2014), available at *http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2014.pdf.*

[20] For a discussion of the costs and benefits underlying rule 206(3)–3T, *see* 2007 Principal Trade Rule Release, Section VI.C.

securities only available on a principal basis.[21] Two commenters also stated that the expiration of rule 206(3)–3T would reduce execution quality for non-discretionary advisory account clients who would no longer have access to a firm's principal accounts.[22] Some commenters further explained that, if the rule were allowed to expire, firms relying on the rule would be required to make considerable changes to their operations, client relationships, systems, policies and procedures at substantial expense, without substantial benefits to investors.[23]

Commenters supporting the extension agreed that extending the rule while the Commission conducted its review of the obligations of broker-dealers and investment advisers would be the least disruptive option.[24] However, several of these commenters questioned whether a two-year extension provided the Commission with sufficient time to complete its review and to engage in any subsequent Commission action.[25] These commenters recommended that the Commission adopt rule 206(3)–3T on a permanent basis or, at a minimum, that the Commission extend the rule for five years.[26] Some commenters suggested that adopting the rule on a permanent basis or adopting a longer extension of the rule would also have the benefit of reducing uncertainty for investors and dual-registrant firms.[27]

Three commenters specifically addressed Commission consideration of requests for exemptive orders as an alternative means of compliance with section 206(3). These commenters strongly supported extending the rule instead of Commission consideration of requests for exemptive orders.[28] Two commenters expressed concern about the potential inefficiency and uncertainty created by the need to submit individual requests for exemptive relief, and suggested that the Commission consider a request for class exemptive relief if the rule were allowed to sunset.[29] One commenter urged the Commission to adopt a streamlined process for exemptive requests that closely tracks the procedures of the rule if the rule sunsets.[30]

Two commenters opposed extending the rule, arguing that the Commission should not premise an extension of the rule on the need to consider principal trading as part of the broader consideration of the obligations of broker-dealers and investment advisers when the Commission has not yet commenced any formal rulemaking under section 913 of the Dodd-Frank Act.[31] These commenters questioned whether the temporary rule provides adequate investor protection against abusive trading practices.[32] In this regard, the commenters asserted that oral disclosure and consent may not promote informed investor decisions in light of the limitations of such disclosures.[33] In addition, the commenters argued that there is no evidence that principal trades being conducted in accordance with the rule are being conducted in investors' best interests.[34] One commenter also questioned whether the Commission had considered evidence that had emerged since the rule was first adopted in connection with the proposed extension.[35]

On balance, and after careful consideration of these comments, we conclude that extending the rule for two years is the most appropriate course of action at this time. First, with respect to investors, we agree with those commenters that supported extending the rule that permitting the rule to sunset before we complete our consideration of the regulatory requirements applicable to broker-dealers and investment advisers could produce substantial disruption for investors with advisory accounts serviced by firms relying on the rule.[36] These investors might lose access to securities available through principal transactions and be forced to convert their accounts in the interim, only to face the possibility of future change—and the costs and uncertainty such additional change may entail.[37] We believe that rule 206(3)–3T benefits investors because it provides them with greater access to a wider range of securities and includes provisions designed to protect non-discretionary advisory clients.[38]

We do not agree with commenters who suggest that the rule places undue reliance on disclosure and consent, particularly oral disclosure and consent, as a means of investor protection.[39] Section 206(3) does not prohibit advisers from engaging in principal transactions, but rather prescribes a means by which an adviser must disclose and obtain the consent of its clients to the conflicts of interest

[21] *See e.g.,* FSR Letter (asserting that ''investors would be harmed'' if the rule were allowed to expire because investors would have limited access to certain securities); SIFMA 2014 Letter (noting that the rule benefits investors by ''allowing firms to offer investors a greater variety of securities from firm inventories, execute trades in such securities more quickly, and offer customers better prices on such securities''); Wells Fargo Letter (arguing that the expiration of rule 206(3)–3T would ''limit investor choice, negatively impact pricing and force clients to incur additional expenses to access the wider range of securities available through principal trading'').

[22] *See* FSR Letter; Wells Fargo Letter.

[23] *See* FSI Letter; FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[24] *See* Barnard Letter; FSI Letter; FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[25] *See* FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[26] *See* FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter. *See also* FSI Letter (recommending that the Commission adopt rule 206(3)–3T on a permanent basis as part of a harmonization of the regulatory requirements applicable to broker-dealers and investment advisers); Lynn Letter (questioning the temporary nature of the rule).

[27] *See* FSR Letter; SIFMA 2014 Letter.

[28] *See* FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[29] *See* FSR Letter; SIFMA 2014 Letter.

[30] *See* Wells Fargo Letter.

[31] *See* Better Markets Letter; Consumer Federation Letter.

[32] *See* Better Markets Letter (discussing conflicts associated with principal trading and stating that ''it is likely that investors are often unaware of instances where principal trades with their brokers have caused harm, and these abuses go undetected''); Consumer Federation Letter (stating that today's market realities present ''more, and more complex, opportunities for principal trading abuses'' than dumping alone and suggesting that the Commission should update its understanding of these risks).

[33] *See* Better Markets Letter (''A client certainly will have an easier time deciding whether or not to participate in the principal transaction if it receives the details of the proposed trade in writing, rather than having heard them once orally.''); Consumer Federation Letter (arguing that the temporary rule ''reflects an over-reliance on disclosure and fails to incorporate adequate measures to prevent principal trading abuses'').

[34] *See id.*

[35] *See* Consumer Federation Letter.

[36] *See* FSI Letter; FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[37] As previously discussed in prior releases, firms have explained that they may refrain from engaging in principal trading with their advisory clients in the absence of the rule given the practical difficulties of complying with section 206(3), and thus may not offer principal trades through advisory accounts. *See, e.g.,* 2007 Principal Trade Rule Release, Section I.B; 2009 Extension Release, Section I; 2010 Extension Release, Section II. *See also* SIFMA 2014 Letter.

[38] Several commenters agreed that an extension of the rule would continue to benefit investors. *See* SIFMA 2014 Letter (''If the Rule were allowed to expire, most firms continue to report that they would in most cases be unable to comply with Section 206(3) of the Advisers Act . . . Thus, firms would be required to eliminate or greatly reduce their offering of principal trades through advisory accounts, to the detriment of investors.''); Wells Fargo Letter (''If [rule 206(3)–3T] sunsets on December 31, 2014, our clients who rely upon it will likely have access to a more limited universe of principal securities likely at higher prices.''). *But see* Better Markets Letter (contending that the Commission does not have the authority to promulgate the rule, in part, because it cannot make the necessary findings under section 206A). We disagree with this commenter. For the reasons stated in this release we continue to believe that the rule extension is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act.

[39] *See* Better Markets Letter; Consumer Federation Letter.

involved.[40] In light of these serious conflicts of interest and a substantial risk that the proprietary interests of the adviser will prevail over those of its clients, rule 206(3)–3T provides advisers an alternative means to comply with the requirements of that section that is consistent with the purposes, and our prior interpretations of, section 206(3). The rule continues to provide the protection of transaction-by-transaction disclosure and consent, either orally or in writing, subject to several additional conditions designed to protect investors.[41] For example, the rule requires an adviser to provide written, prospective disclosure regarding the conflicts arising from principal trades and to obtain written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions. An adviser is also required under rule 206(3)–3T to send a confirmation statement to the client for each principal trade, disclosing the capacity in which the adviser has acted and indicating that the client consented to the transaction. The written confirmation statement serves as a reminder to clients of each transaction that the adviser effects on a principal basis and that conflicts of interest are inherent in such transactions.[42] In addition, the rule requires an adviser to deliver to the client an annual report itemizing principal transactions to ensure that clients receive a periodic record of principal trading activity in their accounts and to afford them the opportunity to assess the frequency with which their adviser engages in such trades.[43]

Moreover, we note that the rule is limited to principal trades with non-discretionary advisory account clients.[44] As previously stated, we are of the view that the risk of relaxing the procedural requirements of section 206(3) of the Advisers Act when a client has ceded substantial, if not complete, control over the account raises significant risks that the client will not be, or is not in a position to be, sufficiently involved in the management of the account to protect himself or herself from overreaching by the adviser.[45]

We believe that the requirements of rule 206(3)–3T, coupled with regulatory oversight, will adequately protect non-discretionary advisory clients for an additional limited period of time while we consider more broadly the regulatory requirements applicable to broker-dealers and investment advisers.[46] Since its adoption and throughout the period of the extension, the staff has examined and will continue to examine firms that engage in principal transactions and will take appropriate action to help ensure that firms are complying with section 206(3) or rule 206(3)–3T (as applicable), including possible enforcement action.[47] Several recent cases demonstrate our commitment to enforcing firms' compliance with these requirements when they engage in principal transactions with clients.[48] As noted above, staff has also been conducting examinations of dual registrants and is assessing the impact to investors of the different supervisory structures and legal standards of conduct that govern the provision of brokerage and investment advisory services, which may help inform our considerations.[49]

We have also obtained information regarding principal trading through other means. For example, as noted in the Proposing Release, examination staff also requested and received materials from a sample of dual registrants in 2014 to observe the use of the rule by these firms.[50] This examination showed that a number of the firms that were contacted by staff relied on the rule and that those firms had adopted written policies and procedures under rule 206(4)–7 that are designed to comply with the requirements of the temporary rule.[51] Based on the review, it appeared to the staff that the firms relying on the rule had processes in place for the purpose of effecting principal transactions in compliance with the requirements of the temporary rule.

We continue to believe, on balance, that the disruption of allowing the rule to expire is unwarranted as the Commission is engaging in a comprehensive review process that may ultimately produce different regulatory requirements.[52] This disruption will be avoided if the rule remains available while the staff and Commission continue to review and consider the regulatory requirements applicable to broker-dealers and investment advisers.

For the reasons discussed above, we believe that the rule's sunset date

[40] In particular, section 206(3) requires an adviser acting as principal for its own account to disclose to an advisory client in writing before the completion of the transaction the capacity in which the adviser is acting and obtain the consent of the client to such transaction.

[41] *See* 2007 Principal Trade Rule Release, Section II.B. (expressing the belief that trade-by-trade disclosure and consent ''continues to be important to alert clients to the potential for conflicted advice they may be receiving on individual transactions'').

[42] *See* 2007 Principal Trade Rule Release, Section II.B.

[43] *See id.*

[44] Specifically, rule 206(3)–3T applies to principal trades with respect to accounts over which the client has not granted investment discretion, ''except investment discretion granted by the advisory client on a temporary or limited basis.'' Rule 206(3)–3T(a)(1).

[45] *See* 2007 Principal Trade Rule Release, Section II.B.

[46] In addition, rule 206(3)–3T(b) provides that the rule does not relieve an investment adviser from acting in the best interests of its clients, or from any obligation that may be imposed by sections 206(1) or (2) of the Advisers Act or any other applicable provisions of the federal securities laws. Further, the rule requires that advisers seeking to rely on the rule also be registered with the Commission as broker-dealers and that each account for which the investment adviser relies on this rule be a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which the broker-dealer is a member. Rule 206(3)–3T(a)(7).

[47] In the 2010 Extension Proposing Release, we discussed certain compliance issues identified by the Office of Compliance Inspections and Examinations. *See* 2010 Extension Proposing Release, Section II. One matter identified in the staff's review resulted in a settlement of an enforcement proceeding and other matters continue to be reviewed by the staff. *See In the Matter of Feltl & Company, Inc.,* Investment Advisers Act Release No. 3325 (Nov. 28, 2011) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for certain principal transactions and section 206(4) of the Advisers Act and rule 206(4)–7 thereunder for failure to adopt written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules).

[48] *See In the Matter of Barclays Capital Inc.,* Investment Advisers Act Release No. 3929 (Sept. 23, 2014) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for engaging in transactions with advisory clients on a principal basis without providing prior written disclosure to, or obtaining consent from, the clients); *In the Matter of Strategic Capital Group LLC and N. Gary Price,* Investment Advisers Act Release No. 3924 (Sept. 18, 2014) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for engaging in transactions with advisory clients on a principal basis through an affiliated broker-dealer, without providing prior written disclosure to, or obtaining consent from, the clients); *In the Matter of Dominick & Dominick LLC and Robert X. Reilly,* Investment Advisers Act Release No. 3881 (July 28, 2014) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for engaging in transactions with advisory clients on a principal basis without obtaining client consent before completing the transactions); *In the Matter of Paradigm Capital Management, Inc. and Candace King Weir,* Investment Advisers Act Release No. 3857 (June 16, 2014) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for engaging in principal transactions with a hedge fund client through an affiliated broker-dealer without providing effective disclosure to, or obtaining consent from, the fund).

[49] *See supra* note 19 and accompanying text.

[50] Staff identified a representative sample set of dual registrants based on Form ADV data, including firm disclosures on Form ADV Part 2A, and requested materials from the firms that included compliance policies and procedures, sample disclosures, and data regarding the firm's principal transactions with advisory accounts.

[51] 17 CFR 275.206(4)–7. *See also* 2007 Principal Trade Rule Release (noting that an adviser relying on rule 206(3)–3T as an alternative means of complying with section 206(3) must have adopted and implemented written policies and procedures reasonably designed to comply with the requirements of the rule).

[52] *See* FSI Letter; FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

should be extended for a limited period of time.[53] That period of time must be long enough to permit us to consider any rulemaking prompted by our broader review of regulatory requirements applicable to investment advisers and broker-dealers. The Commission and its staff have continued to focus on evaluating options regarding regulatory requirements applicable to broker-dealers and investment advisers. That review is ongoing. We continue to believe that two years provides us sufficient time to act regarding our broader review, while also providing an appropriate balance that addresses commenters' concerns regarding non-discretionary advisory clients' continued access to certain securities and any new investor protection concerns that we may identify through our examination program or otherwise.

III. Certain Administrative Law Matters

The amendment to rule 206(3)–3T is effective on December 30, 2014. The Administrative Procedure Act generally requires that an agency publish a final rule in the **Federal Register** not less than 30 days before its effective date.[54] However, this requirement does not apply if the rule is a substantive rule which grants or recognizes an exemption or relieves a restriction, or if the rule is interpretive.[55] Rule 206(3)–3T is a rule that recognizes an exemption and relieves a restriction and in part has interpretive aspects.

IV. Paperwork Reduction Act

Rule 206(3)–3T contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[56] The Office of Management and Budget (''OMB'') last approved the collection of information with an expiration date of July 31, 2017. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The title for the collection of information is: ''Temporary rule for principal trades with certain advisory clients, rule 206(3)–3T'' and the OMB control number for the collection of information is 3235–0630. The Proposing Release solicited comments on our PRA estimates, but we did not receive comment on them.[57]

The amendment to the rule we are adopting today—to extend rule 206(3)–3T's sunset date for two years—does not affect the current annual aggregate estimated hour burden of 139,358 hours.[58] Therefore, we are not revising the Paperwork Reduction Act burden and cost estimates submitted to OMB as a result of this amendment.

V. Economic Analysis

A. Introduction

The Commission is sensitive to the economic effects, including the benefits and costs and the effects on efficiency, competition, and capital formation, that will result from extending rule 206(3)–3T's sunset date for two years.[59] The economic effects considered in adopting this extension are discussed below.

Rule 206(3)–3T provides an alternative means for investment advisers that are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with their non-discretionary advisory clients. Other than extending the rule's sunset date for two additional years, we are not modifying the rule from its current form. We are extending rule 206(3)–3T in its current form to avoid disruption to firms and clients that rely on the rule while the Commission continues its ongoing consideration of the regulatory requirements applicable to broker-dealers and investment advisers and the recommendations from the 913 Study. In particular, extending the current rule will permit firms to continue to offer, and clients to have access to, certain securities on a principal basis without being required to restructure their operations and client relationships, adjust to a new set of rules, or abandon the operational systems established to comply with the current rule—potentially only to have to do so again when the rule expires or is modified, and once more if the Commission adopts a new approach to principal trading in connection with the broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers. We previously considered and discussed the economic effects of rule 206(3)–3T in its current form in the 2007 Principal Trade Rule Release, the 2009 Extension Release, the 2010 Extension Release, and the 2012 Extension Release.[60]

At the outset, the Commission notes that, where possible, it has sought to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from extending rule 206(3)–3T and its reasonable alternatives. In many cases, however, the Commission is unable to quantify the economic effects because it lacks the information necessary to provide a reasonable estimate.[61] The staff has also not found other quantitative data, including through examinations and comment letters, which impacts the discussion of economic effects in previous releases. We will continue to assess the rule's operation and impacts along with intervening developments during the period of the extension.

The temporary rule currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the amendment are discussed. The amendment, which will extend rule 206(3)–3T's sunset date by an additional two years, will affect investment advisers that are registered with the Commission as broker-dealers and engage in, or may consider engaging in, principal transactions with non-discretionary advisory clients, as well as the non-discretionary advisory clients of these firms that engage in, or may consider engaging in, principal transactions.

Based on IARD data as of October 1, 2014, there are 96 dual registrants that may be relying on the rule; however, evidence suggests that the number of firms actually relying on the rule may be smaller.[62] One commenter questioned

[53] *See* Proposing Release, Section II.

[54] 5 U.S.C. 553(d).

[55] *Id.*

[56] 44 U.S.C. 3501 *et seq.*

[57] *See* Proposing Release, Section IV.

[58] *See Proposed Collection; Comment Request,* 78 FR 72932 (Dec. 4, 2013); *Submission for OMB Review; Comment Request,* 79 FR 7481 (Feb. 7, 2014).

[59] 15 U.S.C. 80b–2(c). Section 202(c) of the Advisers Act mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[60] *See* 2007 Principal Trade Rule Release, Sections VI–VII; 2009 Extension Release, Sections V–VI; 2010 Extension Release, Sections V–VI; 2012 Extension Release, Sections V–VI.

[61] In previous releases, the Commission has requested comment on the economic effects of rule 206(3)–3T, the economic effects of extending the rule, and the economic effects of alternatives. The Commission has not received comments providing quantitative data regarding the economic effects of extensions of rule 206(3)–3T or to alternatives of the rule.

[62] Based on IARD data as of October 1, 2014, there are 291 SEC-registered advisers that are also registered as broker-dealers that have non-discretionary accounts who could potentially rely on the rule; however, only 96 of these dual registrants indicate they currently engage in principal transactions on Form ADV. The actual number of advisers that engage in principal transactions in reliance on the temporary rule is likely smaller. The staff's recent outreach to observe the use of the rule by firms found that some of the dual registrants in the sample, which was derived based on Form ADV data, did not rely on the rule.

whether the Commission could justify extending rule 206(3)–3T when it did not have specific data regarding dual registrant firms' reliance on the rule.[63] This commenter further suggested that without this and other data, the Commission could not confidently assert that the extension of the rule would have the economic effects set forth in the Proposing Release.[64] We know from current and past comment letters, as well as our examination findings, that both large and small advisers have relied and continue to rely upon the rule since its implementation in 2007.[65] Additionally, one comment letter to the Request provided survey results from a small sample of dual-registrant firms, showing that the firms engaged in a significant dollar amount of principal transactions in reliance on the rule in 2012.[66] We believe that this background information provides evidence indicating a reliance on the rule by certain dual-registrant firms. Because the economic effects of extending the rule and its reasonable alternatives will depend on the extent to which eligible firms rely on the rule to engage in principal transactions with non-discretionary advisory clients, however, we recognize that the economic effects could vary significantly among firms and their clients.

B. Analysis of the Extension and Alternatives

As noted above, the temporary rule currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the amendment are discussed. Because the extension of the sunset date in the temporary rule that we are adopting today maintains the status quo, we do not expect additional costs or benefits to result from the extension. For the same reason, we also do not expect the extension to have additional effects on efficiency, competition, or capital formation. Extending the current rule will provide the Commission with additional time to consider principal trading as part of the broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.

Reasonable alternatives to extending the current rule that we considered include allowing the rule to expire, adopting the rule on a permanent basis, and extending the rule for a period other than two years. If the rule is allowed to expire, then an adviser that is registered as a broker-dealer would no longer have a lower cost and more efficient alternative to the requirements under section 206(3) of the Advisers Act like that provided by the temporary rule,[67] and consequently non-discretionary advisory account clients could lose access to the principal accounts of firms that rely on the rule. As noted in the 2012 Extension Release, greater access to a wider range of securities may allow non-discretionary advisory clients to more efficiently allocate capital and, in the long term, the more efficient allocation of capital may lead to an increase in capital formation.[68] If the rule expires, the loss of access by non-discretionary advisory clients to a wider range of securities would reduce the ability of these investors to efficiently allocate capital. A decrease in the ability of investors to efficiently allocate capital could reduce any resulting long-term gains to capital formation. Allowing the rule to expire also would reduce the ability of investors to choose between brokerage accounts and advisory accounts if the investor wishes to maintain access to securities held in firm principal accounts, and may force non-discretionary advisory account clients to bear the costs associated with transferring to brokerage accounts (or lose access to a firm's principal accounts). Firms may also bear the potentially substantial costs associated with restructuring their operations and client relationships or seeking exemptive relief from the provisions of section 206(3) of the Advisers Act.

If the rule is allowed to expire, and firms engage in principal transactions with advisory account clients pursuant to the requirements of section 206(3) of the Advisers Act, investors may be able to more fully evaluate the conflicts of the principal transactions at the time of trades. Two commenters who opposed the extension of rule 206(3)–3T questioned whether preserving investor access to securities sold on a principal basis is ultimately beneficial for investors given the presence of conflicts of interest and the potential for abuse including high trading costs.[69] We believe that the requirements of rule 206(3)–3T, coupled with regulatory oversight, will adequately protect non-discretionary advisory clients for the additional limited period of the extension. As noted above, section 206(3) does not prohibit advisers from engaging in principal transactions, but rather prescribes a means by which an adviser must disclose and obtain the consent of its clients to the conflicts of interest involved. Rule 206(3)–3T, which provides advisers an alternative means to comply with the requirements of that section, continues to provide the protection of transaction-by-transaction disclosure and consent, either orally or in writing, subject to several conditions, including: (i) Written, prospective disclosure regarding the conflicts arising from principal trades; (ii) written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions; (iii) a written confirmation statement sent to the client for each principal trade, disclosing the capacity in which the adviser has acted and indicating that the client consented to the transaction; and (iv) an annual report itemizing principal transactions. We also continue to believe that non-discretionary advisory client access to a wider range of securities is beneficial. Many clients wish to access securities held in the

[63] *See* Consumer Federation Letter.

[64] *See id.*

[65] *See* SIFMA 2014 Letter (stating that a significant number of SIFMA member firms continue to rely on rule 206(3)–3T); Wells Fargo Letter (noting that the firm managed approximately 275,000 non-discretionary advisory accounts in which hundreds of principal trades are made on a monthly basis for the benefit of investors). Past comment letters have also stated that dual registrant firms rely on the rule. For example, SIFMA's 2012 comment letter included survey results from seven dual-registrant firms that, in the aggregate, manage over $325 billion of assets in over 1.1 million non-discretionary advisory accounts. The firms indicated that 459,507 non-discretionary advisory accounts (with aggregate assets of over $125 billion) were eligible to engage in principal trading in reliance on the rule. These firms also indicated that, during 2010–2012, the firms engaged in principal trades in reliance on rule 206(3)–3T with respect to 106,682 accounts and executed an average of 12,009 principal trades per month in reliance on the rule. Comment Letter of SIFMA (Nov. 13, 2012).

[66] *See* Comment Letter of SIFMA (Jul. 5, 2013). Ten firms responded to SIFMA's survey and reported that they relied on the temporary rule for $8 billion in principal transactions across 163,000 retail non-discretionary advisory accounts. In comparison, the ten firms engaged in $36 billion in principal transaction with 498,000 retail advisory accounts under section 206(3) of the Advisers Act and $809 billion in principal transactions with 2,480,000 retail brokerage accounts.

[67] Section 206(3) of the Advisers Act requires an investment adviser to provide written conflict-of-interest disclosure describing its role as principal when transacting securities from its own account and obtain client consent prior to transaction completion. Rule 206(3)–3T provides a dual registrant firm the option of providing transaction-by-transaction disclosures verbally instead of in writing when engaging in principal transactions with non-discretionary advisory clients as long as the firm satisfies additional requirements before and after the transactions. Additional requirements of the temporary rule include the provision of a written prospective disclosure to clients describing the conflicts arising from principal transactions, acquisition of written revocable client consent prospectively authorizing such transactions, the provision of transaction-by-transaction confirmations, and the provision of annual reports itemizing the clients' principal transactions thereafter.

[68] 2012 Extension Release, Section V.B.

[69] *See* Better Markets Letter; Consumer Federation Letter.

inventory of a diversified broker-dealer and clients may wish to access these securities through their non-discretionary advisory accounts.[70]

We previously received a comment suggesting that rule 206(3)–3T may impede capital formation because it would lead to ''more numerous and more severe violations . . . of the trust placed by individual investors in their trusted investment adviser.'' [71] While we understand the view that numerous and severe violations of trust could impede capital formation, the staff has not identified instances where an adviser has used the temporary rule to ''dump'' unmarketable securities or securities that the adviser believes may decline in value into an advisory account, a harm that section 206(3) and the conditions and limitations of rule 206(3)–3T are designed to redress.[72] In addition, non-discretionary advisory account clients benefit from the protections of sales practice rules under the Securities Exchange Act of 1934 (the ''Exchange Act'') and of relevant self-regulatory organizations, and the fiduciary duty and other obligations imposed by the Advisers Act.

We also previously received comments opposing the limitation of the temporary rule to investment advisers that are registered with us as broker-dealers, as well as to accounts that are subject to both the Advisers Act and Exchange Act as providing a competitive advantage to investment advisers that are registered with us as broker-dealers.[73] Commenters on the Proposing Release did not address this specific issue and we have no reason to believe that broker-dealers (or affiliated but separate investment advisers and broker-dealers) are put at a competitive disadvantage to advisers that are themselves also registered as broker-dealers.[74] We intend to continue to evaluate the effects of the rule on efficiency, competition, and capital formation in connection with our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.

If the Commission allowed the rule to expire, firms would no longer incur the costs associated with rule 206(3)–3T, including the operational costs associated with complying with the rule.[75] In the 2007 Principal Trade Rule Release, we presented estimates of the costs of each of the rule's disclosure elements, including: prospective disclosure and consent; transaction-by-transaction disclosure and consent; transaction-by-transaction confirmations; and the annual report of principal transactions. We also provided estimates for the following related costs of compliance with rule 206(3)–3T: (i) The initial distribution of prospective disclosure and collection of consents; (ii) systems programming costs to ensure that trade confirmations contain all of the information required by the rule; and (iii) systems programming costs to aggregate already-collected information to generate compliant principal transactions reports. We do not believe the extension we are adopting today affects the cost estimates associated with the rule.[76] Furthermore, we believe that an eligible adviser that begins to rely on rule 206(3)–3T today would bear the same types of upfront and ongoing costs discussed in the 2007 Principal Trade Rule Release.[77]

If the rule is adopted on a permanent basis, then there may be additional economic effects. We recognize that a temporary rule, by nature, creates uncertainty, which in turn, may result in a reduced ability of firms to coordinate and plan future business activities.[78] The uncertainty with respect to rule 206(3)–3T would be reduced if the rule was adopted on a permanent basis or if the rule was allowed to expire. Nonetheless, we believe that it would not be appropriate to adopt the rule on a permanent basis (with any necessary substantive amendments) while consideration of the regulatory requirements applicable to broker-dealers and investment advisers is ongoing.

Another alternative we considered was to extend the rule for a period other than two years. For example, extending the rule for greater than two years would provide the Commission with additional time to evaluate the impact of any potential rulemaking or other process that may emerge from the broader consideration of fiduciary obligations and other regulatory requirements applicable to broker-dealers and investment advisers. Should our consideration of the fiduciary obligations and other regulatory requirements applicable to broker-dealers and investment advisers extend beyond the sunset date of the temporary rule, such a longer period may be appropriate. Several commenters specifically stated that the rule should be extended for at least five years to provide the Commission with sufficient time to complete its review of the obligations of broker-dealers and investment advisers and to engage in any subsequent Commission action.[79] On balance, however, we continue to believe that the two-year extension of rule 206(3)–3T appropriately addresses the concerns of firms and clients relying on the rule while the Commission continues its ongoing consideration of the standards applicable to investment advisers and broker-dealers.

VI. Final Regulatory Flexibility Act Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') regarding the amendment to rule 206(3)–3T in accordance with 5 U.S.C. 604. We prepared and included an Initial Regulatory Flexibility Analysis (''IRFA'') in the Proposing Release.[80]

A. Need for the Rule Amendment

We are adopting an amendment to extend rule 206(3)–3T's sunset date for two years because we believe that it would not be appropriate to require firms relying on the rule to restructure their operations and client relationships before we complete our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers. The objective of the amendment to rule 206(3)–3T is to continue to provide an alternative method for investment advisers that are dually registered as broker-dealers to comply with section 206(3) of the Advisers Act when acting in a principal capacity with certain of their advisory clients. Absent further

[70] *See* 2007 Principal Trade Rule Release, Section I.B.

[71] *See* Comment Letter of National Association of Personal Financial Advisors (Dec. 20, 2010).

[72] *See* 2010 Extension Proposing Release, Section II (noting that the staff did not identify instances of ''dumping'' in connection with OCIE's examinations regarding compliance with the temporary rule).

[73] *See* Comment Letter of the Financial Planning Association (Nov. 30, 2007); Comment Letter of the American Bar Association, section of Business Law's Committee on Federal Regulation of Securities (Apr. 18, 2008). *See also* 2009 Extension Release, Section VI.

[74] *See* 2009 Extension Release, Section VI; 2010 Extension Release, Section VI; 2012 Extension Release, Section V.

[75] *See supra* note 60.

[76] In the 2007 Principal Trade Rule Release, we estimated the total overall costs, including estimated costs for all eligible advisers and eligible accounts, relating to compliance with rule 206(3)–3T to be $37,205,569. *See* 2007 Principal Trade Rule Release, Section VI.D.

[77] *See id.*

[78] *See* FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter. We also received several comments in connection with prior extensions of the rule urging us to make the rule permanent to avoid such uncertainty. *See e.g.,* Comment Letter of Winslow, Evans & Crocker (Dec. 8, 2010); Comment Letter of Bank of America (Dec. 20, 2010).

[79] *See* FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[80] *See* Proposing Release, Section VI.

action by the Commission, the rule will sunset on December 31, 2014.

We are amending rule 206(3)–3T pursuant to sections 206A and 211(a) of the Advisers Act [15 U.S.C. 80b–6a and 15 U.S.C. 80b–11(a)].

B. Significant Issues Raised by Public Comments

We did not receive any comment letters related to our IRFA.

C. Small Entities Subject to the Rule

Rule 206(3)–3T is an alternative method of complying with Advisers Act section 206(3) and is available to all investment advisers that: (i) Are registered as broker-dealers under the Exchange Act; and (ii) effect trades with clients directly or indirectly through a broker-dealer controlling, controlled by or under common control with the investment adviser, including small entities. Under Advisers Act rule 0–7, for purposes of the Regulatory Flexibility Act an investment adviser generally is a small entity if it: (i) Has assets under management of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[81]

As noted in the Proposing Release, we estimated that as of June 1, 2014, 464 SEC-registered investment advisers were small entities.[82] As discussed in the 2007 Principal Trade Rule Release, we opted not to make the relief provided by rule 206(3)–3T available to all investment advisers, and instead have restricted it to investment advisers that also are registered as broker-dealers under the Exchange Act.[83] We therefore estimated for purposes of the IRFA that 12 of these small entities (those that are both investment advisers and registered broker-dealers) could rely on rule 206(3)–3T.[84] We did not receive any comments on these estimates.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The provisions of rule 206(3)–3T impose certain reporting or recordkeeping requirements and our amendment will extend the imposition of these requirements for an additional two years. The two-year extension will not alter these requirements.

Rule 206(3)–3T is designed to provide an alternative means of compliance with the requirements of section 206(3) of the Advisers Act. Investment advisers taking advantage of the rule with respect to non-discretionary advisory accounts are required to make certain disclosures to clients on a prospective, transaction-by-transaction and annual basis.

Specifically, rule 206(3)–3T permits an adviser, with respect to a non-discretionary advisory account, to comply with section 206(3) of the Advisers Act by, among other things: (i) Making certain written disclosures; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal trades; (iii) making oral or written disclosure and obtaining the client's consent orally or in writing prior to the execution of each principal transaction; (iv) sending to the client a confirmation statement for each principal trade that discloses the capacity in which the adviser has acted and indicating that the client consented to the transaction; and (v) delivering to the client an annual report itemizing the principal transactions. Advisers are already required to communicate the content of many of the disclosures pursuant to their fiduciary obligations to clients. Other disclosures are already required by rules applicable to broker-dealers.

Our amendment will only extend the rule's sunset date for two years in its current form. Advisers currently relying on the rule already should be making the disclosures described above.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities.[85] Alternatives in this category would include: (i) Establishing different compliance or reporting standards or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

We believe that special compliance or reporting requirements or timetables for small entities, or an exemption from coverage for small entities, may create the risk that the investors who are advised by and effect securities transactions through such small entities would not receive adequate disclosure. Moreover, different disclosure requirements could create investor confusion if it creates the impression that small investment advisers have different conflicts of interest with their advisory clients in connection with principal trading than larger investment advisers. We believe, therefore, that it is important for the disclosure protections required by the rule to be provided to advisory clients by all advisers, not just those that are not considered small entities. Further consolidation or simplification of the proposals for investment advisers that are small entities would be inconsistent with our goal of fostering investor protection.

We have endeavored through rule 206(3)–3T to minimize the regulatory burden on all investment advisers eligible to rely on the rule, including small entities, while meeting our regulatory objectives. It was our goal to ensure that eligible small entities may benefit from our approach to the rule to the same degree as other eligible advisers. The condition that advisers seeking to rely on the rule must also be registered with us as broker-dealers and that each account with respect to which an adviser seeks to rely on the rule must be a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which the broker dealer is a member, reflect what we believe is an important element of our balancing between easing regulatory burdens (by affording advisers an alternative means of compliance with section 206(3) of the Act) and meeting our investor protection objectives.[86] Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

VII. Statutory Authority

The Commission is amending rule 206(3)–3T pursuant to sections 206A

[81] *See* 17 CFR 275.0–7.

[82] IARD data as of June 1, 2014. As of October 1, 2014, based on IARD data, we estimate that 480 SEC-registered investment advisers were small entities.

[83] *See* 2007 Principal Trade Rule Release, Section VIII.B.

[84] IARD data as of June 1, 2014. As of October 1, 2014, based on IARD data, we estimate that 7 of these small entities could rely on rule 206(3)–3T.

[85] *See* 5 U.S.C. 603(c).

[86] *See* 2007 Principal Trade Rule Release, Section II.B.7 (noting commenters that objected to this condition as disadvantaging small broker-dealers (or affiliated but separate investment advisers and broker-dealers)).

and 211(a) of the Advisers Act [15 U.S.C. 80b–6a and 80b–11(a)].

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements.

Text of Rule Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

§ 275.206(3)–3T [Amended]

■ 2. In § 275.206(3)–3T, amend paragraph (d) by removing the words ''December 31, 2014'' and adding in their place ''December 31, 2016.''

By the Commission.

Dated: December 17, 2014.

Brent J. Fields,

Secretary.

[FR Doc. 2014–29975 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 316

[Docket No. FDA–2011–N–0583]

Policy on Orphan-Drug Exclusivity; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; clarification on policy.

SUMMARY: The Food and Drug Administration (FDA) is publishing this document to clarify its policy regarding certain aspects of orphan-drug exclusivity. This document is being published because of a recent court decision interpreting provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Orphan Drug Act.

DATES: Effective December 23, 2014.

FOR FURTHER INFORMATION CONTACT: Gayatri R. Rao, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5271, Silver Spring, MD 20993, 301–796–8660.

SUPPLEMENTARY INFORMATION:

I. Background

After a designated orphan drug is approved, section 527 of the FD&C Act (21 U.S.C. 360cc) generally prohibits the Food and Drug Administration (FDA or the Agency) from approving another such drug for the same disease for 7 years. Regulations interpreting this provision were proposed in 1991 (January 29, 1991, 56 FR 3338) and made final in 1992 (December 29, 1992, 57 FR 62076). In 2011, FDA issued a proposed rule (October 19, 2011, 76 FR 64868) to amend these regulations to clarify certain regulatory language and propose areas of minor improvement regarding orphan-drug designation and orphan-drug exclusivity; these were finalized in 2013 (June 12, 2013, 78 FR 35117). These regulations are codified under part 316 (21 CFR part 316).

FDA has interpreted section 527 of the FD&C Act and its regulations such that the Agency will not recognize orphan-drug exclusivity for a drug when it has previously approved the same drug for the same use or indication in a rare disease or condition. §§ 316.3(b)(12); 316.31(a). A drug will not be considered the same as a previously approved drug if, at the time of approval, the sponsor has provided evidence that its drug is ''clinically superior'' to the previously approved drug, that is, the drug is more effective, safer, or makes a major contribution to patient care. § 316.3(b)(3). Accordingly, the sponsor of an orphan-designated drug that is the same as a previously approved drug, as defined in § 316.3(b)(14), is required to demonstrate that its drug is clinically superior to the previously approved drug in order for its drug to be eligible for orphan-drug exclusivity upon approval.

The Agency's interpretation of section 527 of the FD&C Act has been the subject of legal action in *Depomed* v. *HHS et al.*, Civil Action No. 12–1592 (KBJ) (D.D.C. September 5, 2014). Depomed has not demonstrated that GRALISE (gabapentin) is clinically superior to a previously approved drug, Pfizer's NEURONTIN (gabapentin). Accordingly, under the relevant regulations, GRALISE is the same drug as NEURONTIN, because it contains the same active moiety (gabapentin), was approved for the same use (post-herpetic neuralgia), and was not demonstrated to be clinically superior to NEURONTIN. Nevertheless, the *Depomed* court held that FDA must recognize orphan-drug exclusivity for GRALISE for the treatment of post-herpetic neuralgia. Following the *Depomed* decision, under the court's order, FDA recognized orphan-drug exclusivity for GRALISE for the treatment of post-herpetic neuralgia.

II. Orphan-Drug Exclusivity

In consideration of any uncertainty created by the court's decision in *Depomed,* the Agency is issuing this statement. It is the Agency's position that, given the limited terms of the court's decision to GRALISE, FDA intends to continue to apply its existing regulations in part 316 to orphan-drug exclusivity matters. FDA interprets section 527 of the FD&C Act and its regulations (both the older regulations that still apply to original requests for designation made on or before August 12, 2013, as well as the current regulations) to require the sponsor of a designated drug that is the ''same'' as a previously approved drug to demonstrate that its drug is ''clinically superior'' to that drug upon approval in order for the subsequently approved drug to be eligible for orphan-drug exclusivity.

Dated: December 17, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29920 Filed 12–22–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

[K00103 14/15 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000115]

RIN 1076–AF23

Land Acquisitions in the State of Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This rule deletes a provision in the Department of the Interior's land-into-trust regulations that excludes from the scope of the regulations, with one exception, land acquisitions in trust in the State of Alaska.

DATES: This rule is effective January 22, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Rule

Section 5 of the Indian Reorganization Act (IRA), as amended, authorizes the Secretary of the Interior (Secretary) to acquire land in trust for individual Indians and Indian tribes in the continental United States and Alaska. 25 U.S.C. 465; 25 U.S.C. 473a. For several decades, the Department's regulations at 25 CFR part 151, which establish the process for taking land into trust, have included a provision stating that the regulations in part 151 do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or its members (the ''Alaska Exception''). 25 CFR 151.1. This rule deletes the Alaska Exception, thereby allowing applications for land to be taken into trust in Alaska to proceed under the part 151 regulations. The Department retains its usual discretion to grant or deny land-into-trust applications and makes its decisions on a case-by-case basis in accordance with the requirements of part 151 and the IRA.

II. Background and Legislative Authority

In 1934, Congress enacted the IRA to ''establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically.'' *Morton* v. *Mancari,* 417 U.S. 535, 542 (1974). Section 5 of the IRA, described as the ''capstone'' of the land-related provisions in the IRA, authorizes the Secretary, in her discretion, to acquire land in trust for Indian tribes and individual Indians. 25 U.S.C. 465; *Cohen's Handbook on Federal Indian Law* section 15.07[1][a], at 1030 (2012 ed.). In 1936, Congress expressly extended Section 5 and other provisions of the IRA to the Territory of Alaska. Act of May 1, 1936, Public Law 74–538, section 1, 49 Stat. 1250 (codified at 25 U.S.C. 473a).

Thirty-five years later, in 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203, 85 Stat. 688 (codified as amended at 43 U.S.C. 1601 *et seq.*), ''a comprehensive statute designed to settle all land claims by Alaska Natives.'' *Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520, 523 (1998). The Act revoked all but one of the existing Native reserves, repealed the authority for new allotment applications, and set forth a broad declaration of policy to settle land claims. *See* 43 U.S.C. 1618(a), 1617(d), and 1601(b). However, the statutory text of ANCSA did not expressly revoke the Secretary's authority, under Section 5 of the IRA as extended by the 1936 amendment, to take land into trust in Alaska.

Following the passage of ANCSA, the Department reexamined the Secretary's authority to use Section 5 of the IRA to acquire land in trust for Alaska Natives. In a memorandum issued on September 15, 1978, a former Associate Solicitor—Indian Affairs reviewed the question of whether ANCSA precludes the Secretary from acquiring trust lands in Alaska. ''Trust Land for the Natives of Venetie and Arctic Village,'' Memorandum to Assistant Secretary 6—Indian Affairs from Associate Solicitor—Indian Affairs, Thomas W. Fredericks, at 1 (Sept. 15, 1978) (hereinafter ''Fredericks Memorandum''). The Fredericks Memorandum, which relied on the declaration of policy enumerated in ANCSA, concluded that it would be an abuse of discretion for the Secretary to acquire lands in trust in Alaska. In 1980, the Department promulgated the Part 151 regulations, including the Alaska Exception, which states that ''[t]hese regulations do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or it members.'' 25 CFR 151.1. The Alaska Exception has remained the focus of public criticism and internal deliberation since its creation.

In early 2001, the Solicitor for the Department rescinded the Fredericks Memorandum, after considering comments and legal arguments submitted by Alaska Native governments and groups, the State of Alaska, and leaders of the Alaska State legislature. *See* ''Rescinding the September 15, 1978, Opinion of the Associate Solicitor for Indian Affairs entitled 'Trust Land for the Natives of Venetie and Arctic Village,' '' Memorandum to Assistant Secretary—Indian Affairs from Solicitor John D. Leshy, at 1 (Jan. 16, 2001). The Solicitor concluded that ''there is substantial doubt about the validity of the conclusion reached in the 1978 Opinion'' and observed that ''[t]he failure of Congress to repeal [Section 5 of the IRA as extended to Alaska] when it was repealing others affecting Indian status in Alaska . . . raises a serious question as to whether the authority to take land into trust in Alaska still exists.'' *Id.* at 1.

On the same day, the Department issued final rules amending the Part 151 regulations and promulgated a rule nearly identical to the Alaska Exception, which continued the ban on the acquisition of land in Alaska. 66 FR 3452, 3454 (Jan. 16, 2001). The Department stated that the amended regulation ''ought to remain in place for a period of three years during which time the Department will consider the legal and policy issues involved in determining whether the Department ought to remove the prohibition on taking Alaska lands into trust.'' *Id.* However, later that year, the Department withdrew the revised rule without comment, leaving in place the original Alaska exception in the regulations that prevented the government from acquiring land into trust in Alaska. 66 FR 56608, 56609 (Nov. 9, 2001).

A number of recent developments, including a pending lawsuit, caused the Department to look carefully at this issue again. *See Akiachak Native Cmty* v. *Salazar,* 935 F. Supp. 2d 195 (D.D.C. 2013). Most significantly, the Indian Law and Order Commission, formed by Congress to investigate criminal justice systems in Indian Country, brought to light the shocking and dire state of public safety in Alaska Native communities and made specific recommendations to address these challenges. Indian Law and Order Commission, ''A Roadmap For Making Native America Safer: Report to the President and Congress of the United States,'' at 33–61 (November 2013). The Commission's report expressly acknowledged that ''a number of strong arguments can be made that [Alaska fee] land may be taken into trust and treated as Indian country'' and ''[n]othing in ANCSA expressly barred the treatment of former [Alaska] reservation and other Tribal fee lands as Indian country.'' *Id.* at 45, 52. Moreover, the Commission recommended allowing these lands to be placed in trust for Alaska Natives. *See id.* at 51–55. Similarly, the Secretarial Commission on Indian Trust Administration and Reform was established by former Secretary of the Interior Ken Salazar to evaluate the existing management and administration of the trust administration system, as well as review all aspects of the federal-tribal relationship. U.S. Dep't of the Interior, ''Report of the Commission on Indian Trust Administration and Reform,'' at 1 (Dec. 10, 2013). This Commission endorsed the earlier findings and likewise recommended allowing Alaska Native tribes to put tribally owned fee simple land into trust. *Id.* at 65–67.

In light of these urgent policy recommendations, the Department has carefully reexamined the legal basis for the Secretary's discretionary authority

to take land into trust in Alaska under Section 5 of the IRA (25 U.S.C. 465). In particular, we have reviewed the statutory text of ANCSA and other Federal laws and have concluded that this authority was never extinguished. Congress explicitly granted the Secretary authority to take land into trust in Alaska under the IRA and its amending legislation. *See* 25 U.S.C. 465, 25 U.S.C. 473a. Although Congress, through the enactment of ANCSA and other laws, repealed other statutory provisions relevant to Alaska Native lands, it has not passed any legislation that revokes the Secretary's authority to make trust land acquisitions in Alaska, as codified in 25 U.S.C. 473a and 25 U.S.C. 465. ANCSA left these provisions and the Secretary's resulting land-into-trust authority in Alaska intact. *See* Memorandum from Hilary C. Tompkins, Solicitor, to Kevin Washburn, Assistant Secretary—Indian Affairs (April 29, 2014). Thus, the Secretary retains discretionary authority to take land into trust in Alaska under Section 5 of the IRA. Moreover, the Department's policy is that there should not be different classes of federally recognized tribes.

Pursuant to this discretionary authority, the Department earlier proposed a rule removing the Alaska Exception. *See* 79 FR 24648 (May 1, 2014). After considering the comments to the proposed rule, discussed below, the Department has decided to eliminate the final sentence in 25 CFR 151.1, which provides in relevant part that ''[t]hese regulations do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette island Reserve or its members.'' With this rule, the Department does not seek to undo or contravene the settlement codified in ANCSA. Deletion of the Alaska Exception merely confirms the Department's existing statutory authority to take land into trust in Alaska. Any particular trust acquisition would occur only after full consideration of the land acquisition statutory and regulatory factors.

III. Comments on the Proposed Rule and the Department's Responses

We received 105 written comment submissions and held three tribal consultation sessions in Anchorage, Alaska, Washington, DC, and by teleconference.[1] Most comments either strongly supported or strongly opposed the rule. More than half of the commenters, including those who provided oral comments, affirmed their support for the rule. In fact, many stated that the rule is ''long overdue.'' Fewer than half of the commenters (but including the State of Alaska) opposed the Department's taking land into trust in Alaska. A few commenters did not express either support or opposition, but instead requested additional time and consultation. Other comments objected to the taking of any land in trust for any Indian tribes, described specific or hypothetical situations rather than the proposed rule, or were otherwise outside the scope of this rulemaking. The following discussion summarizes and responds to the comments received.

1. Legal Basis for Removal or Retention of the Alaska Exception

a. ANCSA

According to several commenters, removal of the Alaska Exception would contravene the Alaska Native Claims Settlement Act (ANCSA). They assert that ANCSA was Congress's deliberate attempt to extinguish aboriginal land rights and provide Alaska with a solution different from, and more economically viable than, the reservation system in the lower 48 States. Many commenters highlight specific language in ANCSA stating that the law did not establish a reservation system or trusteeship. A few commenters stated that the Supreme Court's decision in *Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520, 523 (1998), which held that ANCSA lands conveyed in fee to an Alaska Native village from two Alaska Native corporations were not ''Indian country,'' was consistent with the intent of ANCSA.

Furthermore, many commenters emphasize the fact that an overwhelming majority of Alaska Native delegates supported the enactment of ANCSA. They note that Congress transferred millions of dollars and millions of acres of land to the Alaska Native corporations created by ANCSA in exchange for extinguishing all claims of aboriginal right, title, use, or occupancy of land or water in Alaska. A commenter stated that to change the regulations now would compromise the benefits and protections due the State as a settling party to ANCSA, including the preservation of State jurisdiction over ANSCA lands. The commenter believes that retaining the Alaska Exception is required because the State provided public funds and ceded land selection priorities to which it was entitled under the Alaska Statehood Act.

Other commenters state that there is no basis in law or policy for retaining the Alaska Exception. They point to a lack of express Congressional intent, in ANCSA and in other federal statutes, to either revoke the Secretary's authority under the IRA to take land into trust in Alaska or deny IRA benefits to Alaska tribes.

Response: The Department disagrees that removal of the Alaska Exception is contrary to ANCSA. It is important to remember that Alaska Native land and history did not commence with ANCSA, and that ANCSA did not terminate Alaska Native tribal governments. As discussed above, while ANCSA revoked existing reservations in Alaska and established a separate statutory scheme in Alaska for the settlement of land claims, it did not repeal the Secretary's authority to take land into trust in Alaska under the IRA. There is nothing precluding the settlement codified in ANCSA and the Department's land-into-trust authority under the IRA from co-existing in Alaska. The Department agrees that the IRA provides legal authority for the removal of the Alaska Exception. In sum, notwithstanding support for the original enactment of ANCSA from various entities, Congress left intact the Secretary's authority pursuant to the IRA to take land into trust in Alaska, and the two statutory schemes can co-exist.

b. Categorical bar applicable to Alaska

Several commenters stated that the removal of the Alaska Exception would remedy a discriminatory application of the IRA under the current regulations, ''so the privileges and immunities accorded Indian tribes in the Lower 48 are no longer withheld from Indian tribes in Alaska.'' Many of these commenters cited the analysis of the judge in the *Akiachak* case as support for removal. *See Akiachak Native Cmty.* v. *Salazar,* 935 F. Supp. 2d 195 (D.D.C. 2013). These commenters stated that the Alaska Exception unduly limits tribal sovereignty and has resulted in high unemployment, poor public safety, substandard education and substandard healthcare for Alaska Natives. *See* Indian Law and Order Comm'n, ''A Roadmap For Making Native America Safer: Report to the President and Congress of the United States,'' at 33–61 (Nov. 2013). Other commenters claim that the removal of the Alaska exception will unnecessarily create tension between races and between urban and rural residents, instead of striving to make a State of one people.

Response: This rule would remove a categorical obstacle to implementation of the IRA in Alaska, in a manner

[1] In the tribal consultation session held in Washington, DC on June 26, 2014, the Department did not receive any comments or inquiries.

similar to the administration of the IRA in the lower 48 States. The U.S. Government has a longstanding trust relationship with federally recognized Indian tribes and individual Indian beneficiaries. *See* August 20, 2014 Secretarial Order 3335, ''Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries.'' The Secretary's authority to acquire lands in trust for Indian tribes and individual Indians can be critical to carrying out the Federal trust responsibility. In addition, the Department's policy is that there should not be different classes of federally recognized tribes. In that regard, the Department has advocated for Congressional legislation clarifying that all federally recognized tribes may seek to place land into trust pursuant to the Indian Reorganization Act of 1934. See *e.g.* May 7, 2014 Testimony of Kevin Washburn, Assistant Secretary—Indian Affairs, United States Department of the Interior before the Senate Committee on Indian Affairs on S. 2188. After reviewing the comments in light of post-ANCSA Indian legislation and the findings of two blue-ribbon commissions, the Secretary has concluded that the blanket exclusion of Alaska tribes from its land into trust program is not warranted. Because there may be circumstances in which the exercise of trust acquisition authority is warranted and is consistent with both ANCSA and the United States' trust relationship with tribes, the Department has concluded that retention of the Alaska Exception is not appropriate. This rule gives Alaska Native tribes the option of applying to have fee land taken into trust through the same procedures as Indian tribes elsewhere in the United States, provided that all land acquisition requirements have been fulfilled.

c. Timing of the Rule

Several commenters stated that the rule is premature because the *Akiachak* decision issued by the U.S. District Court for the District of Columbia is currently on appeal or being used for political purposes.

Response: The district court's judgment in *Akiachak* is consistent with the conclusion we reach but is not the basis for the Department's decision to eliminate the Alaska Exception. We have independently concluded that there is no legal impediment to taking land into trust in Alaska, and there are sound policy reasons for giving Alaska tribes the opportunity to petition to take land into trust. Two blue-ribbon commissions composed of experts outside the federal government recently recommended deletion of the exception. These commissions discussed some of the reasons, and there are several others. The purpose of this rule is also grounded in the implementation of the Secretary's IRA authority. This rule represents an affirmative resolution to a longstanding controversy and internal discussions over whether the Secretary has authority to take land into trust in Alaska and whether the Secretary should, as a matter of policy, consider taking Native land in Alaska in trust.

2. Effects of Removing the Alaska Exception

a. On Alaska Native Tribes, in General

Commenters in support of the rule claimed that the rule would help Alaska Native tribes. On the other hand, commenters opposed to the rule argued that the rule would not help, and may possibly harm, Alaska Native tribes. Several Alaska Native tribes provided their own experiences of living in isolation and poverty. They shared how taxation by the boroughs and a lack of trust land hinders their ability to exercise essential governmental functions. Commenters expressed the view that the rule would help Alaska Native tribes for the reasons listed below.

- The government's acquisition of land into trust on behalf of tribes in the rest of the United States has succeeded in allowing tribes to reconsolidate and preserve homelands;
- The rule would offer Alaska Native tribes the opportunity to reap certain benefits of having land taken into trust, and would:
  - Allow Alaska Native tribes to regulate and protect their traditional land bases in Alaska and potentially obtain tax income to support the exercise of essential governmental functions, such as providing infrastructure and human services;
  - Improve Alaska Native tribes' ability to maintain their cultural integrity, including language preservation, religion, traditional Native foods, and other aspects of tribal identity and sovereignty;
  - Provide a path to home ownership for individual tribal members and protection against predatory lending and foreclosures;
  - Enhance the government-to-government relationship between Alaska Native tribes and the U.S. Government;
  - Promote and strengthen tribal self-governance and self-determination, which are closely associated with sovereignty over and management of tribal lands;
  - Allow Alaska Native tribes to develop and implement effective co-management arrangements for subsistence and access to resources that could help stabilize communities;
  - Allow tribal members, rather than corporation shareholders, to guide development to take more useful forms and improve standards of living for all tribal members;
  - Allow for the eligibility of Federal programs that are currently restricted to trust lands, such as opportunities for economic development, housing, and environmental and cultural resource protection;
  - Allow for healthier, safer, and more successful Native communities through the ability to exercise a sovereign right of self-government; and
  - Advance the policy goals established by Congress in the IRA, eight decades ago, of protecting tribal lands and advancing tribal self-determination.

Other commenters stated that the rule would not help, or may even harm, Alaska Native tribes for the following stated reasons:

- The reservation system in the lower 48 has been unsuccessful, encourages isolation, stifles economic development (*e.g.,* by providing no financial collateral to potential investors), has been an obstacle to tribal self-governance and control of land, and has resulted in deplorable health and crime conditions;
- The ANCSA corporate model has been successful. It better provides for self-sufficiency of Alaska Native tribes and Alaska's overall economy than a reservation system would;
- Allowing land to be taken into trust to advance social and economic development is unnecessary and would be detrimental to the State of Alaska; and
- Taking land into trust in Alaska:
  - May have negative impacts on regional and village corporations that are currently providing beneficial opportunities for Alaska Natives;
  - Will not have a unifying effect or produce a cohesive land base to further tribal self-determination, because the only lands eligible to be taken into trust in many villages are scattered tracts; and
  - Will encourage dependency on the government.

One commenter further asked how taking land in trust in Alaska will benefit the State of Alaska and Alaskans in general (beyond Alaska Native tribes).

Response: While the potential benefits and drawbacks of taking any given property already owned by the tribe into trust may depend upon specific circumstances, Alaska Native tribes and individuals have the right to decide for

themselves whether to apply to have their land taken into trust. This rule will merely allow Alaska Native tribes the option to decide whether to apply to have land taken into trust. The Secretary reviews each individual application to take land into trust in accordance with the applicable statutory and regulatory criteria, including any jurisdictional problems, potential conflicts of land use, and the impact of removing a parcel from the tax rolls. In addition, the acquisition of land in trust in Alaska could foster economic development, enhance the ability of Alaska Native tribes to provide services to their members, and give additional tools to Alaska Native communities to address serious issues, such as child welfare, public health and safety, poverty, and shortages of adequate housing, on a local level independent of the State of Alaska. As a result, the final rule may at some point benefit the larger community in the State of Alaska as a whole, not only Alaska Natives. Finally, Alaska Native Corporations are an integral and important part of the landscape of native life in Alaska. The views of Alaska Native Corporations have been carefully considered in this initiative, and will be considered in the context of any particular application for trust acquisition. As a general matter, taking land into trust for Alaska Native tribes is unlikely to have a negative effect on Alaska Native Corporations, as these entities will continue to exist and hold lands separately from Alaska Native tribes.

b. Public Safety in Alaska Native Communities

Several commenters pointed to the 2013 report of the Indian Law and Order Commission, a bi-partisan commission established by Congress to investigate criminal justice systems in Indian Country. The Report described in detail certain public safety issues facing Alaska Native communities, such as high rates of domestic abuse, sexual violence, suicide, death from alcohol abuse, and child maltreatment, which disproportionately affect Native Alaskan women and children. *See* Indian Law and Order Comm'n, ''A Roadmap For Making Native America Safer: Report to the President and Congress of the United States,'' (Nov. 2013). As these commenters stated, many of the Alaska Native villages are remote and inaccessible by road, with limited or no law enforcement or access to substance abuse services. These commenters agreed with the Report's conclusion that allowing lands to be placed in trust could be an important component of addressing the lack of law enforcement capacity in Alaska Native villages and increasing the ability of Alaska Native tribes to combat what has become a dire public safety crisis in some villages. *See, Id.* at 45, 52–3. Commenters stated that the creation of trust lands in Alaska would provide a jurisdictional underpinning for tribes to implement a better functioning criminal justice system tailored to their communities' needs. Some commenters also believed that the existence of trust lands in Alaska would enhance tribal courts' ability to resolve conflicts in culturally relevant ways (through tribal courts and sentencing circles, for example), while affording tribal governments the ability to partner with the State more effectively and thereby create safer communities. A few commenters noted that the current State criminal justice system in Alaska Native communities is not effective, even with public safety officers in villages, and that tribal governments are in the best position to improve upon this system.

Although no commenters disputed the Report's descriptions of the public safety challenges faced by Alaska Native communities, a few commenters disputed the Report's conclusion that taking land into trust could help address these challenges. These commenters stated that the State of Alaska has prioritized partnering with tribes and Alaska Native communities in order to address public safety challenges with more effective tools than taking land into trust. The commenters stated that there are other mechanisms for tribes to obtain federal funding and federal law enforcement resources.

Response: The acute public safety problems in Alaska Native communities, which were thoroughly described in the 2013 Indian Law and Order Commission report, warrant making every practicable solution available to Alaska Native tribes. This rule will allow each Alaska Native tribe the opportunity to decide for itself whether applying to take certain lands into trust would provide the most effective tools and mechanisms to address public safety challenges in its community. Tribal governments are best positioned to assess the needs of their own communities, as well as identify workable solutions to address those needs. The opportunity to apply for acceptance of land into trust will therefore expand the range of possibilities available to Alaska Native tribes, and could provide them with much-needed additional tools to engender safer communities. Moreover, it will not have an effect on the ability of the State of Alaska to continue using its own authority under Public Law 280 to exert jurisdiction over natives and non-natives alike, even if lands are actually taken into trust. The rule simply increases the potential for a tribal government to address public safety, which would increase the government resources that could be focused on these crucially important issues.

c. Resource Management in Alaska

Several commenters, including conservation and sportsmen organizations, opposed the rule on the basis that it could negatively affect resource management, including fish and game management, on Alaska lands. Specifically, these commenters asserted that the State of Alaska alone has the legal right to manage Alaska's fish and wildlife under ANCSA and the common use principle in Alaska's State Constitution. The commenters claim that taking land into trust in Alaska would not only destroy the well-functioning, uniform State management of these public resources, but also negate settled agreements and the work Alaska Native corporations have accomplished to integrate Native lands within an overall management scheme. Several commenters stated that this rule would result in complicated jurisdictional issues by splintering fish and game management among over 200 tribes and 11 regional Native corporations, while imposing a management regime that would cause confusion, duplication of positions, and additional costs. Likewise, several commenters stated that this rule would make sound conservation of fish and wildlife in Alaska virtually impossible, because major species traverse thousands of miles and cannot be effectively managed by piecemeal laws and efforts.

Response: In evaluating any request to have land taken into trust in Alaska, the Department will consider, among other factors, any jurisdictional problems and potential conflicts of land use that may arise. Even assuming that particular lands are taken into trust and that fish and wildlife on those lands were placed under the authority of a tribal regulator, the State, federal and tribal regulatory authorities can work to identify ways to cooperate and collaborate in support of shared resource management goals, as they have in the 48 contiguous states.

d. Jurisdictional Balances

A few commenters opposed the rule because they believe that the rule would disrupt the ''intricate jurisdictional and land ownership balances'' established through the Alaska Statehood Act and ANCSA, instead creating ''confusing

patches of jurisdiction.'' In particular, the Attorney General of the State of Alaska stated that as a consequence of this rule, any trust land would be subject to concurrent state and tribal criminal jurisdiction, therefore creating confusion and subjecting nonmember residents to tribal laws and a tribal system in which they have no ability to participate. Commenters stated that a change to tribal jurisdiction over trust lands in Alaska could result in blocked access to rights and property, impede infrastructure development, hurt government resources, raise the tax burden for others due to loss of tax revenue, undermine essential State and local regulation, and compromise the ability of State and local governments to manage public resources, provide services, and ensure public safety. On the other hand, other commenters asserted that taking land into trust in Alaska would present fewer issues than in many other States.

Lastly, some commenters inquired as to the circumstances in which lands placed in trust in Alaska will be considered ''Indian country'' for civil and criminal matters. They also asked if ''Indian country'' would include former ANCSA lands that are placed in trust.

Response: The Department emphasizes that such jurisdictional issues will be considered during the process preceding any decision to take land into trust. Indeed, the Part 151 regulations implementing the IRA require the Secretary to consider jurisdictional problems and possible conflicts of land use when determining whether to approve any given application for land into trust. *See* 25 CFR 151.10 and 151.11. Such issues will be considered by the Department on a case-by-case basis with respect to each application for land into trust. In fact, the Supreme Court of the United States has recognized the Part 151 regulations as being sensitive to inter-jurisdictional concerns. *See City of Sherrill, N.Y.* v. *Oneida Indian Nation of New York,* 544 U.S. 197, 220–21 (2005) (quoting 25 CFR 151.10(f)). If an application for ANCSA or other lands owned by a tribe meets the statutory and regulatory criteria, the land could be taken into trust.

The Department's position has been that land held in trust by the United States on behalf of a federally recognized Indian tribe is ''Indian country.'' As a legal matter, an Alaska tribe possessing trust lands would be able to exercise jurisdiction over such land consistent with the manner in which Indian tribes exercise authority over trust lands located in the rest of the country. Because Alaska is a ''Public Law 280'' State (as included by Public Law 85–615), Alaska state courts would also generally continue to possess jurisdiction over most crimes and most civil disputes occurring in Indian Country in Alaska.

e. Split Estates

Several Alaska Native regional corporations that provided comments expressed concern that their ability to develop their subsurface estate could be affected if the surface estate owned by a tribe is acquired into trust by the United States. Specifically, they assert that in addition to obtaining the consent of village corporations, regional corporations would have to coordinate with tribal entities and the Federal government, and that there could be a ''taking'' of the subsurface rights if access to mineral development is denied. These commenters emphasized that the access of these corporations to their mineral estate is critical to the success of their economic development efforts. Several stated that their consent should be required for any applications for land into trust, in which they own the subsurface estate. They also asserted that the rule should include a mechanism to resolve disagreements between the subsurface and surface owners. A tribal commenter stated that in Oklahoma and other parts of Indian country, so-called ''split estates'' (where there are different owners of the surface and subsurface estates) are routinely part of fee-to-trust transactions.

Response: The statutory scheme in ANCSA allows for the split ownership of surface and subsurface rights in Alaska; the implementation of Section 5 of the IRA in Alaska would not impact this split ownership, but would instead allow tribes to apply to place any of their ownership rights (acquired through voluntary transactions) into trust. The Department has processed and approved land-into-trust applications from Indian tribes involving split estates under the Part 151 regulations in other parts of the United States. In a number of cases, the Department has acquired a surface estate into trust at the request of a petitioning tribe that owned the surface estate.

In the circumstances posed by the commenters, if the regional corporation or another party owns the subsurface estate, the rights to that subsurface estate are not affected by the acquisition of the surface estate into trust. It is well-settled under the law that a mineral estate remains dominant, and a subsurface owner has a right of reasonable access to the minerals below. *See, e.g., Del Rio Drilling Programs* v. *United States,* 35 Fed. Cl. 186 (1996). In such circumstances, the surface owner's estate is subservient to the owner of the mineral estate. This right would be preserved even if the surface estate is taken into trust. Meanwhile, Title XI of the Alaska National Interest Lands Conservation Act (ANILCA) guarantees access to inholdings, which would include a subsurface estate. *See* 16 U.S.C. 3170. Of course, the Department would encourage any surface owners and subsurface owners in Alaska to enter into surface use agreements regarding such access.

Moreover, in the spirit of the Department's consultation policy with Alaska Native Corporations and the extensive notice provisions in Part 151, the Department will be interested in hearing the views of the corporations as to any application for land into trust before the Department on which corporations wish to comment.

f. Public Easements

Commenters asked whether taking land into trust would affect existing easements and rights-of-way across the land, as well as the ability to obtain future easements and rights-of-way.

Response: Land is regularly taken into trust by the Department subject to existing easements and rights-of-way. Once the land is in trust, anyone seeking a new easement or right-of-way across trust land would have to comply with 25 CFR part 169.

g. ANCSA and ANCSA's Revenue-Sharing Provisions

One Alaska Native corporation suggested clarifying how the rule impacts ANCSA's provisions requiring revenue-sharing among regional corporations, village corporations, and at-large shareholders.

Response: This rule will not have a direct effect on the ANCSA revenue-sharing provisions. Taking land into trust does not necessarily change the revenue-sharing arrangements, and this would be one of many factors considered in the Department's review of applications under Part 151.

3. Applicability of the Rule

Several commenters suggested that certain land owned by Alaska Native corporations under ANCSA, land in ''selection'' status (not yet conveyed), or land designated and limited by ANCSA, should not be eligible to be taken into trust by virtue of being part of the settlement and as necessary to preserve Alaska Native corporations' ability to meet their statutory obligations. A few other commenters stated that no ANCSA lands should be excluded if a tribe acquires them. Another commenter

questioned whether former reservation land that the tribe acquired in fee would be eligible to be taken into trust.

Response: An Alaska Native tribe or individual possessing fee title to any alienable land, including ANCSA lands, may apply to have that land taken into trust by the United States. The Department considers trust applications on a case-by-case basis in compliance with its regulations at 25 CFR part 151. Land selected under ANCSA, but not yet conveyed, is not eligible for being taken into trust since it is not owned by the tribe.

4. Implementation of the Rule

a. General Questions on Part 151

A few commenters had general questions regarding the process for taking land into trust. Some asked whether land may be acquired in trust for Alaska Native individuals, in addition to Alaska Native tribes.

Response: The process, requirements, and criteria governing the acquisition of land in trust are outlined in 25 CFR part 151 and the Fee-to-Trust Handbook, which is available at *www.bia.gov.* The rule makes the land-into-trust process available to both Alaska Native tribes and Alaska Native individuals; however, separate restrictions and requirements apply to each. *See* 25 CFR 151.3 and 151.10(d).

b. Effect of Land Being Taken Into Trust

A commenter asked multiple questions regarding the effect of land being taken into trust and the trust relationship, including whether BIA approval is needed for projects on trust land, and whether trust land may be proclaimed as an Indian reservation in Alaska.

Response: Once land is held in trust by the United States, BIA approval is generally necessary whenever a third party (or someone other than the Indian or tribal landowner) seeks to obtain an interest in the land. For example, to obtain a right-of-way on trust land, an applicant must follow the procedures and requirements for obtaining BIA approval as set forth in 25 CFR 169. This rule does not address whether trust lands in Alaska may be proclaimed an Indian reservation under the IRA. *See* 25 U.S.C. 467.

c. BIA Implementation of the Rule

Several tribes requested that, if the rule is implemented, applications to take land into trust in Alaska be expedited considering Alaska Natives have been denied the right for many decades. Others questioned whether BIA has the resources to handle an influx of these applications.

Response: This Department's policy is to process trust applications as expeditiously as possible.

A few commenters had questions about the types of State and local services that the Department would provide (*e.g.,* education, title records, road building) if land were taken into trust in Alaska. They asked whether BIA has, or will have, the resources to support newly acquired trust land, without diluting current services.

Response: The Department will review inquiries about services provided to a tribe requesting land in trust on a case-by-case basis. Furthermore, when reviewing applications to take land into trust under 25 CFR 151, the Department considers ''whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.'' 25 CFR 151.11(g).

5. Further Revisions, Consultations, and Public Notice and Comment

Several commenters stated that additional revisions to Part 151 and additional consultations and/or public notice and comment are necessary to address Alaska-specific issues and potential impacts. A few commenters stated that the Department should engage in an educational effort after the rule is finalized to avoid conflict within Alaska communities. Several commenters stated that the current land-into-trust process in Part 151 should be revised. Among the suggestions were requests to revise the process to: (1) Allow neighboring jurisdictions and the public to comment on trust acquisitions (*e.g.,* individuals and entities affected by public access over easements, those with hunting and fishing rights, and those with mining claims); (2) allow governments to comment on impacts other than just jurisdictional, taxation, and special assessment issues, as currently allowed in Part 151; (3) provide more than a 30-day period in which to comment, given a potential flood of applications from over 200 Alaska tribes; and (4) address how ANCSA lands could be protected from alienation, adverse possession, taxes and certain judgments during the interim period of time between the transfer of Alaska Native corporation land to a tribe and the acquisition of land into trust status.

Response: Many of the concerns expressed in these comments are already addressed by the current land-into-trust process. For example, depending on what type of review is conducted under the National Environmental Policy Act (NEPA), members of the public may comment on the environmental impacts of a given trust acquisition application, including neighboring jurisdictions and those affected by public access easements. In addition, governments with regulatory jurisdiction over any land to be acquired in trust can and do comment on any of the applicable factors enumerated in sections 151.10 or 151.11. *See County of Sauk, WI* v. *U.S. Dep't of the Interior,* 45 IBIA 201, 207–08 (2007). With regard to the 30-day period in which to comment, the BIA will consider requests for extensions on a case-by-case basis. If ANCSA lands are conveyed to a Native Alaskan tribe or individual, they are in no greater danger of being alienated or otherwise exposed to risks than any other parcel of property would be. If Interior encounters issues unique to Alaska that are not addressed through the existing process as it processes applications, it will consider appropriate actions to address those issues at that time.

Some commenters also stated that if the Alaska Exception is removed, the current criteria considered by BIA in reviewing fee-to-trust acquisitions should be revised to add specific criteria tailored to Alaska. Among the suggestions for revisions to the current regulatory criteria were: (1) Clarification as to whether land in Alaska will be treated as ''off-reservation'' in light of the fact that only one tribe has a reservation in Alaska or clarification as to whether former reservations will be considered; (2) clarification of how BIA will treat the distance from the boundaries of an Alaska Native tribe's reservation; (3) new criteria to require the Department to consider fully any effect on the ownership and governance by regional and village corporations; (4) new criteria to consider the history of ownership of the parcel; (5) new criteria to consider whether there are competing claims to the parcel (including State-owned rights-of-way); and (6) new criteria to consider whether trust status will affect residents who are not tribal members.

Other commenters stated that there should not be any special provisions uniquely applicable to Alaska.

Response: The Department's existing criteria already explicitly take into account many of the concerns listed above, and others may naturally arise and can be considered in the context of the existing criteria. Given that the existing process uses a fact-intensive, case-by-case approach, the Department has concluded that the current fee-to-trust process, as set forth in Part 151, can be made applicable to Alaska. For example, applications by Alaska Native

tribes without reservations, regardless of whether or not they previously had reservations, will be reviewed as landless tribes and examined under the ''off-reservation'' criteria in the regulations. Regional and village corporations may submit comments during the application review process. Any State-owned right-of-way would continue to exist, even after parcel is transferred to the United States in trust status. Likewise, any easements created by Section 17(b) of ANCSA, which cross ANCSA corporation lands held by the United States to ensure access by the public to publicly owned lands and major waterways, would be preserved in the event that a trust acquisition application is approved. *See* 85 Stat. 708. *See also* 43 CFR 2650.4–7.

A few commenters submitted requests to extend comment period for the proposed rule beyond the extended comment deadline of July 30, 2014.

Response: The Department retained the extended deadline of July 30, after having determined that the 90-day public notice and comment period provided sufficient time for public review and input.

6. Miscellaneous

a. NEPA

One commenter stated that the Department should have prepared an environmental assessment or environmental impact statement under the NEPA for this rulemaking, given the potential impacts to state and local taxing authorities and management of resources.

Response: The final rule does not constitute a major Federal action significantly affecting the quality of the human environment. The Department has established a categorical exclusion for ''regulations . . . whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' 43 CFR 46.210(i). The environmental and other effects of this rulemaking are merely speculative and are not identifiable at this point. The final rule, by itself, does not guarantee that land will be taken into trust in Alaska, and does not transfer the title of any specific parcel of land. The rule simply allows for Alaska Native tribes to avail themselves of the Department's authority under the IRA governing the acquisition of land into trust; however, NEPA review is applicable for each of the Department's decisions to acquire land into trust on behalf of a tribe. The Department will consider and comply with any NEPA obligations in the context of a specific fee-to-trust transaction. *See* Bureau of Indian Affairs National Environmental Policy Act Guidebook Section 3.1 (2012). As a result, the issues like those raised by the commenter will be considered in the context of each application.

b. Federalism

The State of Alaska Attorney General and Alaska CACFA claim that the Department failed to consult with the State as required by EO 13132. They asserted that such consultation is required, because the rule would have substantial impacts on the State and its relationship with Federal and tribal governments, as well as the distribution of governmental authority throughout the States.

Response: The State has the opportunity and right to participate during the Department's review of individual applications to take land into trust in Alaska, as permitted by Part 151. Whether EO 13132 applies to taking land into trust in Alaska is best considered during the consideration of a particular parcel of land. As this rule does not take any specific land into trust in Alaska, the potential effects on certain matters addressed in EO 13132 are currently speculative.

IV. Determination To Remove the Alaska Exception

Having reviewed and considered the foregoing comments, the majority of which supported the proposed rule, we have determined that removal of the Alaska Exception is supported by both legal and public policy considerations. As many of the commenters noted, there are a number of benefits that can result from having land taken into trust. In enacting the IRA, Congress recognized that the acquisition of land into trust status on behalf of Indian tribes can assist in furthering tribal self-determination and self-governance. By providing a physical space where tribal governments may exercise sovereign powers to provide for their citizens, trust land can help promote tribal self-governance and self-determination. The goals of tribal self-governance and self-determination are equally as important to Alaska Native tribes as they are to tribes in the rest of the United States. This rule removes the categorical ban and provides for the Department to make a case-by-case determination on whether to take any given property in Alaska into trust. Those case-by-case determinations include consideration of important environmental effects and other impacts under NEPA, as well as consideration of the statutory and applicable regulatory criteria. The Secretary will retain full discretion to evaluate and determine whether to approve any particular trust application in Alaska.

As explained in the responses to comments above, concerns with regard to resource management and jurisdictional issues are considered in the NEPA and Part 151 review process on a case-by-case basis for each land-into-trust application. The potential complexities mentioned by several commenters with regard to split estates, public easements, and ANCSA lands do not warrant maintaining the regulation's categorical ban on taking land into trust in Alaska.

Both legal and public policy considerations therefore support the removal of the categorical exclusion of Alaska from the regulations implementing the Secretary's land-into-trust authority under Section 5 of the IRA.

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule 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.*).

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because the rule is limited to acquisitions of Indian land.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in E.O. 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is therefore not required.

F. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule has no 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. The State has the opportunity and right to participate during the Department's review of individual applications to take land into trust in Alaska, as permitted by Part 151.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments,'' E.O. 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets. The Department held consultation sessions to discuss the proposed rule in Anchorage, Alaska on June 9, 2014, by teleconference on June 18, 2014, and in Washington, DC on June 26, 2014. As noted above, the Department did not receive any comments at the consultation session in Washington, DC.

I. Paperwork Reduction Act

OMB Control Number: 1076–0100.

Title: Acquisition of Trust Land, 25 CFR 151.

Brief Description of Collection: This information collection requires tribes and individual Indians seeking to have land taken into trust status to provide certain information. No specific form is used but respondents supply information so that the Secretary may make an evaluation and determination in accordance with established Federal factors, rules, and policies.

Type of Review: Revision of currently approved collection.

Respondents: Indian tribes and individuals.

Number of Respondents: 1,060 on average (each year) (an increase of 60 respondents per year).

Number of Responses: 1,060 on average (each year) (an increase of 60 responses per year).

Frequency of Response: On occasion.

Estimated Time per Response: (See table below).

Estimated Total Annual Hour Burden: 74,400 hours (an increase of 6,600 hours).

Citation 25 CFR 151	Information	Average number of hours	Average number per year	Estimated annual burden hours	Estimated increase in burden hours
151.9, 151.10 (On-Res), and 151.13	Application	50	850	42,500	0
	Documentation for NEPA—tribe and individual furnish documentation.	40	120	4,800	0
	Documentation for NEPA—Tiering	20	200	4,000	0
151.9, 151.11 (Off-Res), and 151.13	Application	70	210	14,700	4,200
	Documentation for NEPA—tribe provides documentation.	40	210	8,400	2,400

OMB Control No. 1076–0100 currently authorizes the collections of information contained in 25 CFR part 151. The annual burden hours for applicants (tribal governments applying to have land taken into trust) will increase by approximately 6,600 hours because of the increase in potential applications as a result of this rule.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because these are ''regulations . . . whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' 43 CFR 46.210(j). This rule does not guarantee that land will be acquired in trust in Alaska, it merely opens the door to the process to Alaska tribes and individual Indians in Alaska. Individual trust acquisitions in Alaska pursuant to the Part 151 regulations constitute major Federal actions requiring NEPA compliance. Bureau of Indian Affairs National Environmental Policy Act Guidebook Section 3.1 (2012). No extraordinary circumstances exist that would require greater NEPA review.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

List of Subjects in 25 CFR Part 151

Indians-lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 151 in Title 25 of the Code of Federal Regulations as follows:

PART 151—LAND ACQUISITIONS

■ 1. The authority citation for part 151 continues to read as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

■ 2. Revise § 151.1 to read as follows:

§ 151.1 Purpose and scope.

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law, be held in restricted status following acquisition. Acquisition of land in trust status by inheritance or escheat is not covered by these regulations.

Dated: December 18, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–30099 Filed 12–22–14; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Standards Improvement Project—Phase III

CFR Correction

In Title 29 of the Code of Federal Regulations, Part 1900 to § 1910.999, revised as of July 1, 2014, in § 1910.36, on page 151, revise the Note to paragraph (b), and on page 152, revise the Note to paragraph (f), to read as follows:

§ 1910.36 Design and construction requirements for exit routes.

* * * * *

(b) * * *

Note to paragraph (b) of this section: For assistance in determining the number of exit routes necessary for your workplace, consult NFPA 101–2009, Life Safety Code, or IFC–2009, International Fire Code (incorporated by reference, see § 1910.6).

* * * * *

(f) * * *

Note to paragraph (f) of this section: Information regarding the ''Occupant load'' is located in NFPA 101–2009, Life Safety Code, and in IFC–2009, International Fire Code (incorporated by reference, see § 1910.6).

* * * * *

[FR Doc. 2014–30196 Filed 12–22–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0993]

RIN 1625–AA00

Safety Zones Within the Captain of the Port New Orleans Zone, Louisiana

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for two fireworks display events within the Captain of the Port (COTP) New Orleans Zone. This action is necessary to protect persons and vessels from potential safety hazards associated with these events. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative.

DATES: This rule is effective without actual notice from December 23, 2014 until January 1, 2015. For the purposes of enforcement, actual notice will be used from December 6, 2014, until December 23, 2014.

This rule will be enforced from 9:00 p.m. to 9:30 p.m. on December 6, 2014 and from 11:45 p.m. on New Year's Eve, December 31, 2014 to 12:30 a.m. on January 1, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0993]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) James Gatz, Sector New Orleans, at (504) 365–2281 or *James.C.Gatz@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
LMR Lower Mississippi River
MM Mile Marker
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

There are two separate marine events addressed by this temporary regulation. (1) The Plaquemines Parish Fair & Orange Festival is an annually occurring event, but the sponsor did not apply for a marine event permit for the prior year's event and the event appears to have no regulatory history. (2) The Madisonville New Year's Eve event is also an annually occurring event, but the sponsor did not apply for a marine event permit for the prior year's event, and the event appears to have no regulatory history. Upon full review of the details of each of each of these events, the Coast Guard determined that additional safety measures are necessary.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because as scheduled, the displays would take place before the full NPRM process could be completed. Because of the dangers presented by aerial barge based

fireworks displays taking place on and over the waterway, it is in the public's interest for the Coast Guard to establish these safety zones to protect persons and property during the displays. These displays have also been advertised to and planned on by the local community. Delaying this rule to complete the full NPRM process would also be impracticable as it would unnecessarily interfere with possible contractual obligations. While it is in the public's best interest to provide this safety measure, the impacts on navigation are expected to be minimal as the safety zones will only be enforced for short durations. The Coast Guard will notify the public and maritime community that the safety zones will be in effect and of their enforcement periods via broadcast notices to mariners (BNM).

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Providing a full 30 days notice is contrary to the public interest as it would delay the effectiveness of the safety zones until after the planned fireworks events. Immediate action is needed to protect vessels and mariners from the safety hazards associated with aerial fireworks displays over waterways.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703, 50 U.S.C. 191. 195; 33 CFR 1.05–1; 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The Coast Guard has determined that this temporary rule is necessary to promote the safety of life on navigable waterways within the COTP New Orleans Zone during these events. (1) The safety fallout area for the Plaquemines Parish Orange Festival fireworks will extend 300 feet into the Lower Mississippi River from a point between MM 19.5 and MM 20.5 above Head of Passes (AHP). The Lower Mississippi River is approximately 2600 feet wide at this location. There is room for vessels to pass by the safety fallout zone, however, the possibility of malfunction resulting in a firework being launched horizontally poses a risk to the chemical and oil tankers which frequently transit the river. (2) The safety fallout area for the Madisonville New Years Eve fireworks will extend 500 feet in all directions from the center of the Tchefuncta River, one-half mile north of the confluence of the Tchefuncta River and Lake Pontchartrain. The Tchefuncta River is approximately 1050 feet wide at this location, which leaves no room for any vessel to safely pass the fireworks barge.

C. Discussion of the Final Rule

This temporary rule establishes two safety zones for two fireworks displays. This rule will be enforced during two separate dates occurring between December 6, 2014 and January 1, 2015.

The events covered by this regulation will be enforced on the respective dates and times listed in the table below.

Item number	Name of event	Date, time and location
1	Plaquemines Parish Fair and Orange Festival	Date: December 6, 2014, from 9:00 p.m. to 9:30 p.m. Location: The entire width of the Lower Mississippi River between MM 19.5 and MM 20.5 above Head of Passes.
2	Madisonville New Year's Eve Celebration	Date: New Year's Eve, December 31, 2014 from 11:45 p.m. until 12:30 a.m. on January 1, 2015. Location: The entire width of the Tchefuncta River beginning at the confluence of the Tchefuncta River and Lake Pontchartrain and extending one mile north.

Entry into, anchoring in, or remaining in each of these zones during the times stated is prohibited unless permission has been granted by the COTP New Orleans, or a designated representative.

The COTP New Orleans will inform the public through broadcast noticed to mariners of the enforcement periods for the safety zones as well as any changes in the planned schedules. Mariners and other members of the public may also contact Coast Guard Sector New Orleans Command Center to inquire about the status of the safety zones, at (504) 365–2200.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. These safety zones will restrict navigation on the following dates and locations: Thirty minutes on December 6, 2014 between MM 19.5 and 20.5 above Head of Passes on the Lower Mississippi River; and forty-five minutes on New Year's Eve, December 31, 2014–January 1, 2015 from the confluence of the Tchefuncta River and Lake Pontchartrain and extending one mile north. Due to the limited scope and short duration of the safety zones, the impacts on routine navigation are expected to be minimal.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Lower Mississippi River from MM 19.5 to MM 20.5 AHP between 9:00 p.m. and 9:30 p.m. on December 6, 2014; and the Tchefuncta River from MM 0.0 to MM 1.0 between 11:45 p.m. New Year's Eve, December 31, 2014 and 12:30 a.m. on

January 1, 2015. This rule will not have a significant economic impact on a substantial number of small entities because it is limited in scope and will only be enforced for one hour or less on two separate dates. Before enforcement, COTP New Orleans will issue maritime advisories widely available to users of the river and will make notifications to the public through marine band radio when each safety zone is being enforced. Additionally, deviation from this rule may be requested and will be considered on a case by case basis by COTP New Orleans or a COTP New Orleans designated representative.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing one temporary safety zone on the Lower Mississippi River and one temporary safety zone on the Tchefuncta River. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04.6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–0993 is added to read as follows:

§ 165.T08–0993 Safety Zones, New Orleans Captain of the Port Zone, LA.

(a) *Location.* The following areas are safety zones:

(1) All waters of the Lower Mississippi River from mile marker 19.5 to mile marker 20.5 above Head of Passes, Fort Jackson, LA.

(2) All waters of the Tchefuncta River from the confluence of the Tchefuncta River and Lake Pontchartrain, extending

one mile north into the Tchefuncta River, Madisonville, LA.

(b) *Effective dates and enforcement periods.* This rule is effective without actual notice from December 23, 2014 until January 1, 2015. For the purposes of enforcement, actual notice will be used from December 6, 2014, until December 23, 2014. The safety zones will be enforced during the following times:

(1) December 6, 2014, from 9:00 p.m. until 9:30 p.m., at Fort Jackson, LA.

(2) New Year's Eve, December 31, 2014 at 11:30 p.m. until January 1, 2015 at 12:30 a.m., at Madisonville, LA.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into these zones is prohibited unless specifically authorized by the Captain of the Port (COTP) New Orleans or designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Persons and vessels requiring deviation from this rule must request permission from the COTP New Orleans or a COTP New Orleans designated representative. They may be contacted on VHF–FM Channel 16 or 67, or through Coast Guard Sector New Orleans at 504–365–2200.

(3) Persons and vessels permitted to deviate from this rule must transit at the slowest safe speed and comply with all lawful directions issued by the COTP New Orleans or designated representative.

(d) *Information broadcasts.* The COTP New Orleans or a COTP New Orleans designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zones as well as any changes in the planned schedule.

Dated: December 3, 2014.

Philip C. Schifflin,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 2014–30102 Filed 12–22–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2014–0390; FRL–9920–63]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: EPA is withdrawing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for thirty chemical substances, which were the subject of premanufacture notices (PMNs). EPA published these SNURs using direct final rulemaking procedures, which requires EPA to take certain actions if an adverse comment is received. EPA received adverse comments regarding the SNURs identified in this document. Therefore, the Agency is withdrawing the direct final rule SNURs identified in this document, as required under the direct final rulemaking procedures.

DATES: This document is effective December 26, 2014.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0390, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 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 OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** of October 27, 2014 (79 FR 63821) (FRL–9914–56). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What rules are being withdrawn?

In the October 27, 2014 **Federal Register**, EPA issued direct final SNURs for the chemical substances that are identified in this document. These direct final SNURs were issued under the procedures in 40 CFR part 721, subpart D. Because the Agency received a notice of intent to submit adverse comments, in accordance with 40 CFR 721.160(c)(3)(ii), EPA is withdrawing the direct final SNURS issued for the following chemical substances, which were the subject of PMNs: Functionalized carbon nanotubes (generic), (PMN No. P–13–793); Propaneperoxoic acid, 2,2-dimethyl-, 1,1,3,3-tetramethylbutyl ester, (CAS No. 22288–41–1), (PMN No. P–14–72); Fatty acid amide hydrochlorides (generic), (PMN No: P–14–89, P–14–90, P–14–91, and P–14–92) Fatty acid amides (generic), (PMN No. P–14–158, P–14–159, P–14–161, P–14–162, and P–14–163); and Fatty acid amide acetates (generic), (PMN No. P–14–173, P–14–175, P–14–176, P–14–177, P–14–178, P–14–179, P–14–180, P–14–181, P–14–182, P–14–183, P–14–184, P–14–185, P–14–186, P–14–187, P–14–188, P–14–190, P–14–191, P–14–192 and P–14–193). EPA intends to publish proposed SNURs for the chemical substances identified in this document.

For further information regarding EPA's direct final rulemaking procedures for issuing SNURs, see 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314).

III. Statutory and Executive Order Reviews

This action withdraws regulatory requirements that have not gone into effect and which contain no new or amended requirements. As such, the Agency has determined that this action will not have any adverse impacts, economic or otherwise. The statutory and Executive Order review requirements applicable to the direct final rule were discussed in the October 27, 2014 **Federal Register**. Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

IV. Congressional Review Act (CRA)

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

Register. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 17, 2014.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

■ 2. In the table in § 9.1, under the undesignated center heading ''Significant New Uses of Chemical Substances,'' remove §§ 721.10776, 721.10780, 721.10781, 721.10782 and 721.10783.

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.10776 [Removed]

■ 4. Remove §§ 721.10776.

§§ 721.10780 through 721.10783 [Removed]

■ 5. Remove §§ 721.10780 through 721.10783.

[FR Doc. 2014–30023 Filed 12–22–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 14–12]

RIN 3072–AC58

Amendments to Regulations Governing the Rules of Practice and Procedure for Dismissals of Actions

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its rules governing dismissals of actions by complainants, by order of the presiding officer, and by respondents when complainant fails to prosecute.

DATES: *Effective:* January 24, 2015.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published a proposed rule on September 22, 2014, 79 FR 56546, to amend Rule 72 of its Rules of Practice and Procedure, 46 CFR 502.72, to reflect its intent with regard to review and approval of settlement agreements prior to dismissal of formal complaints. No comments were received to the proposed rule and the Commission hereby adopts it as a final rule.

Section 502.72 currently permits voluntary dismissals by notice, allowing a complainant to dismiss an action voluntarily before an answer or other responsive pleading is served. Additionally, the rule permits dismissal of complaints by stipulation of the parties, thereby fostering efficient and speedy resolution of matters that have become moot (*e.g.,* cargo has been delivered, expense of litigation, etc.). The rule does not, however, expressly address the circumstance when a voluntary dismissal is the result of a settlement between the parties.

When § 502.72 was published, the Commission stated that it ''did not intend to eliminate the requirement for review of settlement.'' Docket No. 11–05, Rules of Practice and Procedure, *Final Rule,* 77 FR 61519–20 (Oct. 10, 2012). The revision adopted here reflects the Commission's intent to adhere to its long-standing policy of reviewing settlements by adding language to clarify that when a voluntary dismissal is based on a settlement agreement, the agreement must be submitted for approval by the Commission.

The Commission has followed a well-established policy of encouraging settlement agreements in proceedings brought before it. *Old Ben Coal Co.* v. *Sea-Land Serv., Inc.,* 18 S.R.R. 1085, 1091 (ALJ 1978). The Commission has adhered to ''encourag[ing] settlements and engage[ing] in every presumption which favors a finding that they are fair, correct, and valid.'' *Inlet Fish Producers, Inc.* v. *Sea-Land Serv., Inc.,* 29 S.R.R. 975, 978 (ALJ 2002) (quoting *Old Ben Coal,* 18 S.R.R. at 1091); *see also Ellenville Handle Works, Inc.* v. *Far E. Shipping Co.,* 20 S.R.R. 761, 763 (ALJ 1981) (noting that settlements may be approved upon a showing that the settlement is bona fide and not a device for rebating). The Commission has exercised oversight of these settlements to ensure that such agreements are free from ''fraud, duress, undue influence, [or] mistake'' and do ''not contravene any law or public policy.'' *Old Ben Coal,* 18 S.R.R. at 1093.

Although the Commission undertakes a relatively limited role in scrutinizing settlements, *see P.R. Shipping Ass'n* v. *P.R. Ports Auth.,* 27 S.R.R. 645, 647 (ALJ 1996), it has also made clear that it ''does not merely rubber stamp any proffered statement, no matter how anxious the parties may be to terminate their litigation.'' *Old Ben Coal,* 18 S.R.R. at 1092. Previously, the Commission required proof of a statutory violation before approving a settlement. An agreement to settle a proceeding could only ''be approved . . . upon an affirmative finding that such violation occurred.'' *Consolidated International Corporation* v. *Concordia Line, Boise Griffin Steamship Company, Inc.,* 18 F.M.C. 180, 183 (ALJ 1975); *cf. Ketchikan Spruce Mills* v. *Coastwise Line,* 5 F.M.B. 661 (1959) (settlement was not approved because it could not be shown that the tariffs were unreasonable or violated the Shipping Act).

In *Old Ben Coal,* the Commission modified this requirement in favor of a revised standard that allows the Commission to assess whether ''the settlement offered is fair, reasonable, and adequate,'' and whether the settlement is ''free of fraud, duress, undue influence, [or] mistake.'' 18 S.R.R. at 1091. Additionally, the Commission may weigh the likelihood of the complainant's success if litigation were pursued, as well as balance the adequacy of the terms of settlement against the estimated cost and complexity of continued litigation. *Id.* at, 1093–94. Finally, the Commission will review the settlement to ensure that it is ''proper and does not itself violate any provision of the law.'' *Id.* at 1091.

Settlements meeting these criteria ''will probably pass muster and receive approval.'' *Id.* at 1093; *see also World Chance Logistics (Hong Kong), Ltd.-Possible Violations,* 31 S.R.R. 1346, 1350 (FMC 2010).

The clarifying language reflects the Commission's intent as expressed when it promulgated section 502.72 that it was not changing its long standing policy with respect to review of settlement agreements, and articulates the requisite procedure for voluntary and involuntary dismissal of complaints.

This final rule is not a ''major rule'' under 5 U.S.C. 804(2). No notice of proposed rulemaking is required; therefore, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply.

List of Subjects in 46 CFR Part 502

Administrative practices and procedures, Claims, Equal Access to Justice, Investigations, Practice and procedure, Procedural rules, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Maritime Commission amends 46 CFR part 502 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596, 5 U.S.C. 571–584; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; E.O. 11222 of May 8, 1965.

Subpart E—Proceedings; Pleadings; Motions; Replies

■ 2. Revise § 502.72 to read as follows:

§ 502.72 Dismissals.

(a) *Voluntary dismissal.* (1) *By the complainant.* When no settlement agreement is involved, the complainant may dismiss an action without an order from the presiding officer by filing a notice of dismissal before the opposing party serves either an answer, a motion to dismiss, or a motion for summary decision. Unless the notice or stipulation states otherwise, the dismissal is without prejudice.

(2) *By stipulation of the parties.* The parties may dismiss an action at any point without an order from the presiding officer by filing a stipulation of dismissal signed by all parties who have appeared. In the stipulation the parties must certify that no settlement on the merits was reached. Unless the stipulation states otherwise, the dismissal is without prejudice.

(3) *By order of the presiding officer.* Except as provided in paragraphs (a)(1) and (a)(2) of this section, an action may be dismissed at the complainant's request only by order of the presiding officer, on terms the presiding officer considers proper. If the motion is based on a settlement by the parties, the settlement agreement must be submitted with the motion for determination as to whether the settlement appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

(b) *Involuntary dismissal; effect.* If the complainant fails to prosecute or to comply with these rules or an order in the proceeding, a respondent may move to dismiss the action or any claim against it, or the presiding officer, after notice to the parties, may dismiss the proceeding on its own motion. Unless the dismissal order states otherwise, a dismissal under this subpart, except one for lack of jurisdiction or failure to join a party, operates as an adjudication on the merits.

(c) *Dismissing a counterclaim, crossclaim, or third-party claim.* This rule applies to dismissals of any counterclaim, crossclaim, or third-party claim.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–29946 Filed 12–22–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 15, 27, 73, and 74

[GN Docket No. 12–268; FCC 14–143]

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations to the Commission's rules which were published in the **Federal Register** on Thursday, November 6, 2014 (79 FR 65906). The Commission published a clarification in the Declaratory Ruling, which clarifies how the Commission intends to preserve the ''coverage area'' of eligible broadcasters in the repacking process associated with the broadcast television spectrum incentive auctions. This document contains corrections to the adopted date.

DATES: Effective November 6, 2014.

FOR FURTHER INFORMATION CONTACT: Aspasia Paroutsas, Office of Engineering and Technology, 202–418–7285, *Aspasia.Paroutsas@fcc.gov.*

SUPPLEMENTARY INFORMATION: The regulations that are the subject of this correction relates to ''Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions'' adopted date.

Need for Correction

As published, in the final regulations appearing on page 65906 in the **Federal Register** of November 6, 2014, the first sentence of the **SUPPLEMENTARY INFORMATION** is corrected to read as follows:

This is a summary of the Commission's Declaratory Ruling, GN Docket No. 12–268, FCC 14–143, adopted September 30, 2014 and released September 30, 2014.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–30079 Filed 12–22–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 13–49; FCC 14–30]

Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: On April 1, 2014, the Commission released a Report and Order, ''Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band.'' This document contains corrections to the final regulations for ''Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band'' that appeared in the **Federal Register** on May 1, 2014 (79 FR 24569).

DATES: Effective December 23, 2014.

FOR FURTHER INFORMATION CONTACT: Aole Wilkins, Office of Engineering and Technology, (202) 418–2406 or email *Aole.Wilkins@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction relates to ''Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band'' under § 15.407(a)(1).

Need for Correction

As published, the revised text in the final regulations contains errors that are misleading and need immediate correction.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

Accordingly, 47 CFR part 15 is corrected by making the following correcting amendment:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 2. Section 15.407 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 15.407 General technical requirements.

(a) * * *

(1) * * *

(iii) For fixed point-to-point access points operating in the band 5.15–5.25 GHz, the maximum conducted output power over the frequency band of operation shall not exceed 1 W. In addition, the maximum power spectral density shall not exceed 17 dBm in any 1 megahertz band. Fixed point-to-point U–NII devices may employ antennas with directional gain up to 23 dBi without any corresponding reduction in the maximum conducted output power or maximum power spectral density. For fixed point-to-point transmitters that employ a directional antenna gain greater than 23 dBi, a 1 dB reduction in maximum conducted output power and maximum power spectral density is required for each 1 dB of antenna gain in excess of 23 dBi. Fixed, point-to-point operations exclude the use of point-to-multipoint systems, omnidirectional applications, and multiple collocated transmitters transmitting the same information. The operator of the U–NII device, or if the equipment is professionally installed, the installer, is responsible for ensuring that systems employing high gain directional antennas are used exclusively for fixed, point-to-point operations.

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Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–29858 Filed 12–22–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GN Docket No. 12–268; ET Docket Nos. 13–26 and 14–14; FCC 14–157]

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses several outstanding issues related to the Incentive Auction. The Commission addresses and rejects proposals for additional limits on any new interference between television stations as a result of the repacking process. The Commission establishes a methodology and the associated input values to predict inter-service interference between television and wireless services in certain areas for use during the incentive auction (ISIX Methodology).

DATES: Effective January 22, 2015, except for §§ 73.3700(b)(1)(iv)(B), 73.3700(b)(2)(i) introductory text, and 73.3700(b)(2)(ii) of the rules which contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13, that are not effective until approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing OMB approval and the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Aspasia Paroutsas, (202) 418–7285, *Aspasia.Paroutsas@fcc.gov,* Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order and Further Notice of Proposed Rulemaking,* GN Docket No. 12–268; ET Docket Nos. 13–26 and 14–14, FCC 14–157, adopted October 16, 2014 and released October 17, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Second Report and Order

Requested Additional Limits on New Interference in the Repacking Process

1. The Commission declined to establish a one-percent cap on the amount of total or aggregate new interference that a broadcast station will be allowed to receive from other stations, as requested by the National Association of Broadcasters (NAB) and others. In the *Incentive Auction R&O,* 79 FR 48442, August 15, 2014, the Commission adopted a 0.5 percent limit on new interference that will be applied on a pairwise or station-to-station basis. The Commission concludes that broadcasters' concerns regarding the potential for new interference in the absence of a separate one-percent cap on aggregate interference are exaggerated: the vast majority of stations are unlikely to experience aggregate new interference of more than one percent. The Commission also adopted measures that will effectively address broadcasters' concerns about such interference in exceptional cases where there may be aggregate new interference of more than one percent. In addition to being unnecessary, the proposed cap is not practical or realistic, because even if the broadcasters had identified a means of implementing it (they have not), an aggregate interference cap would deprive the reverse auction bidding process of its speed and, therefore, compromise the success of the incentive auction. The Commission concludes that it can fulfill Congress's mandate to make ''all reasonable efforts'' to preserve the population served of stations that will remain on the air after the incentive auction without imposing an aggregate interference cap. Crucially, the Commission can do so in a manner that ensures an efficient channel assignment scheme, minimizes repacking costs and disruption to broadcasters and viewers, and furthers the goal of a successful auction. The Commission also declined to adopt an additional limit on new interference to stations that are currently experiencing ten percent or more interference within their service areas.

Background

2. Section 6403(b)(2) of the Spectrum Act requires the Commission, in reorganizing or ''repacking'' the broadcast television bands, to ''make all reasonable efforts to preserve, as of [February 22, 2012], the coverage area and population served'' of eligible television stations. In the *Incentive Auction R&O,* the Commission interpreted this mandate to require ''that we use all reasonable efforts to preserve each station's coverage area and population served without sacrificing the goal of using market forces to repurpose spectrum for new, flexible uses.'' Consistent with that interpretation, the Commission adopted an approach to preserving population served under which no channel assignment, ''considered alone, may reduce another station's specific population served by more than 0.5 percent.'' The Commission's rules treat 0.5 percent interference or less as *de minimis* or no new interference, as this amount rounds to zero at integer precision. Under this approach, the Commission will only consider station-to-station (or ''pairwise'') interference when determining whether a particular channel assignment is permissible.

3. While most commenters, including the broadcast industry, supported the Commission's approach to pairwise interference, NAB, supported by other broadcasters, urged the Commission to adopt two additional measures. First, NAB asked that the Commission cap the amount of total new interference that a station may receive at one percent. According to NAB, ''while an individual station can only cause a maximum addition of 0.5 percent interference . . . , 'stations repacked during the incentive auction process . . . , would likely receive interference from multiple stations' which, in the aggregate, could 'lead to significant viewer losses.' '' Second, noting that some stations currently receive up to ten percent interference, NAB requested that the Commission prevent any new interference to these stations. The Commission deferred a decision on these proposals, explaining that FCC staff would be ''releasing a Public Notice inviting comment on a staff analysis of the potential impact of aggregate interference on television stations as a result of the repacking process,'' and that the Commission would resolve the issue in a subsequent order.

4. The staff released its analysis on June 2, 2014. The *Aggregate Interference PN* explained that the staff analysis was based on updated ''constraint files'' for each station developed using the repacking approach adopted in the *Incentive Auction R&O,* including the pairwise approach to preserving population served. Using these constraint files, the staff conducted 100 simulations of the repacking process, based on two different spectrum recovery scenarios (84 MHz and 120 MHz) and applying several different approaches to select which stations went off the air as a result of the reverse auction, producing a channel assignment plan for each simulation. The staff then calculated the aggregate or total predicted new interference from all stations to each station's population served for every channel plan. Across all of the simulations, no station was predicted to receive aggregate new interference of two percent or more. One percent of stations were predicted to receive aggregate new interference between one and two percent, while the vast majority of stations (approximately 88 percent) were predicted to receive aggregate new interference of well under the 0.5 percent *de minimis* threshold.

Stations Are Highly Unlikely To Experience Aggregate Interference of More Than One Percent

5. Broadcasters' concerns regarding the potential for aggregate new interference to more than one percent of their viewers in the absence of a cap are overstated: The vast majority of stations are unlikely to experience significant new interference as a result of the repacking process. NAB points to a sample New York station which has seven stations causing some unique, non-overlapping interference, arguing that without a cap this station could receive new aggregate interference of two to three percent as a result of the repacking process. However, NAB's analysis includes existing patterns of interference—that is, areas in which viewers do not currently receive service from a station due to interference from other stations—which the repacking approach does not consider in seeking to preserve population served. Staff analysis applying the repacking approach adopted in the *Incentive Auction R&O* predicts that the overwhelming majority of stations (approximately 99 percent) will not experience new interference above the proposed cap. Only one percent of all stations were predicted to receive aggregate new interference between one and two percent, with no station predicted to receive two percent or greater. In addition, the vast majority of stations (approximately 88 percent) across all 100 simulations conducted by the staff were predicted to receive new interference from all stations of well under the 0.5 percent *de minimis* threshold. These results indicate that the station-to-station or pairwise approach to preserving population served that the Commission adopted in the *Incentive Auction R&O* is sufficiently conservative to prevent the crowded market scenario that concerns NAB.

6. *Accuracy of the Underlying Data.* NAB questions the accuracy of the staff analysis based on purported anomalies in the underlying data. The updated constraint files underlying the staff analysis consist of two files for each television station: A ''domain'' file that lists all of the channels to which the station could be assigned considering fixed constraints, and an ''interference-paired'' file that lists all of the other stations that could *not* be assigned to operate on the same or on an adjacent channel with that station (because the stations' interference relationship would violate the 0.5 percent new pairwise interference threshold). NAB points to two examples in which the files reflect that two or more stations cannot be assigned to the same channel on certain frequencies, but may be assigned to the same channel on nearby frequencies. According to NAB, these ''results appear highly unlikely given that . . . the change in the amount of interference caused between assigning closely spaced channels . . . is not significant.'' The examples NAB identifies represent neither an error nor an inconsistency in the underlying data. These results simply demonstrate that predicted interference will change slightly as stations move from one channel to another because radio waves propagate differently on different frequencies. The slight variations may result in situations where stations cannot operate on one channel under the applicable constraints, but may operate on a nearby channel, because such variations cause the interference relationship between two stations to go above or below the 0.5 percent interference threshold. Thus, NAB's examples do not reflect inconsistencies or errors in the updated constraint files underlying the staff analysis.

7. *Robustness of the Studies.* The Commission also rejected NAB's claims that the staff analysis is skewed by the spectrum recovery scenarios studied and understates the potential for new aggregate interference. Arguments that lower levels of broadcaster participation in the reverse auction (resulting in less spectrum recovered) increase the potential for new aggregate interference in crowded markets are based on a misunderstanding of the repacking

process. In the 84 and 120 MHz scenarios studied by the staff, higher levels of participation are required because more stations would have to voluntarily relinquish their spectrum usage rights in order for the Commission to be able to repack the remaining stations consistent with the constraints adopted in the *Incentive Auction R&O.* In other words, more stations would have to go off the air because fewer channels would be available in the TV spectrum to repack broadcasters. If, on the other hand, fewer broadcasters choose to participate, as NAB contends is likely, the pairwise constraints would prevent the auction from repurposing as much spectrum, leaving more television channels available to assign to stations. Regardless of how much spectrum is recovered, the constraints remain static throughout the auction, and provide limits to whether and how stations may be repacked.

8. The results of the staff's analysis were consistent across broadcaster participation rates, which ranged from 80 to 100 percent, and across a large (36 MHz) difference in the two spectrum recovery scenarios studied. This consistency confirms that lower levels of broadcaster participation—and scenarios in which less spectrum is recovered—will not have a significant impact on new aggregate interference. The staff's approach to selecting the stations to voluntarily go off the air in the simulations also ensured that virtually every station was part of at least one simulation in which that station remained on the air. Accordingly, we reject NAB's contention that the results of the staff analysis are unreliable.

9. *Release of Simulation Software.* The Commission rejects contentions that the *Aggregate Interference PN* comment period was too short and that meaningful comment on the staff analysis was impossible without access to the simulation software that the staff used to generate constraint files and perform feasibility checks. The *Aggregate Interference PN* provided 30 days for comments and an additional 20 days for reply comments, and parties have had additional time to analyze the study (and to submit *ex parte* filings) since the comment period closed. Ample information has been made publicly available to allow for meaningful input on the staff analysis and its results, including the methodology, data, and assumptions underlying the analysis. Moreover, in the interest of transparency and encouraging meaningful input, the Commission and its staff have made extensive information about the repacking process publicly available over the course of this proceeding. The data and methodology required to simulate repacking scenarios were first detailed more than a year ago in the *Repacking Data PN.* The staff provided technical detail about how software could be used to perform ''feasibility checks'' (that is, to determine whether channels can be assigned to all of the stations eligible for protection in the repacking process consistent with the constraints imposed by the Spectrum Act) in January 2014, and further detailed the staff's repacking simulation software in a subsequent workshop. Thus, interested parties have had sufficient time and information to comment meaningfully on the staff analysis.

Measures To Address Aggregate Interference of More Than One Percent in Exceptional Cases

10. The Commission adopted two measures to address exceptional cases where a station is predicted to receive aggregate new interference in excess of one percent. First, it will use optimization techniques that seek to avoid final channel assignments that would result in aggregate new interference of more than one percent. After the incentive auction bidding closes and the set of stations that will remain on the air in each band is established, the Commission plans to employ optimization techniques to determine a final channel assignment scheme from the provisional channel assignments identified during the reverse auction bidding process. During this final channel assignment process, the Commission can take time to account for factors in addition to feasibility, such as aggregate new interference, without compromising the speed of the reverse auction bidding process. Among other objectives, it intends to seek a final channel assignment that minimizes new aggregate interference above one percent. Although the current rules do not provide broadcasters with complete protection from aggregate interference caused by other broadcast stations, the Commission chose a one percent threshold in light of broadcasters' stated concerns about aggregate interference exceeding this amount.

11. Although the Commission anticipates that this final channel assignment optimization procedure will further reduce the already-small number of stations that are predicted to receive new interference greater than one percent, it cannot guarantee this result in every case. The optimization procedure can identify the best final channel assignment scheme given the station-to-band assignments produced by the reverse auction. However, the Commission cannot change these assignments after the bidding stops and the final stage rule is met without undoing the entire auction. Accordingly, as an additional safeguard, if a station is predicted to receive new interference above one percent on the final channel assigned to it following the repacking process, the Commission will provide it with the opportunity to file an application proposing an alternate channel or expanded facilities in a priority filing window, along with a limited number of other stations that have been assigned the same priority. This opportunity will be available to any station entitled to protection in the repacking process that is predicted to experience aggregate new interference in excess of one percent, regardless of whether that station was reassigned to a new channel in the repacking process. Taken together, the final channel assignment optimization procedure and post-assignment facilities modification processes will provide a ''safety valve'' in the exceptional cases where new aggregate interference above one percent has occurred or is likely to occur.

An Aggregate Cap Would Deprive the Reverse Auction Bidding Process of Its Speed and Threaten the Success of the Auction

12. In addition to being unnecessary for the reasons described above, imposition of an aggregate interference cap would compromise the central objective of a successful auction that allows market forces to determine the highest and best use for spectrum. Speed is critical to the successful implementation of the incentive auction: The repacking methodology must be capable of analyzing complex technical issues fast enough to not unduly slow down the bidding process. Under the repacking approach adopted in the *Incentive Auction R&O,* only one provisional channel assignment scheme that meets all of the constraints need be identified for the reverse auction bidding to proceed. Tens of thousands of individual ''feasibility checks'' may need to be run in each bidding round, and examining interference relationships only on a ''pairwise'' or station-to-station basis is the only way to identify a ''feasible'' repack analysis quickly enough to meet the Commission's objectives for the reverse auction. As discussed, the Commission intends to account for factors beyond mere feasibility without compromising the bidding process by seeking to optimize provisional channel

assignments after the bidding stops: Once the set of stations that will remain on the air in each band after the auction is complete has been established, the Commission intends to use optimization techniques to determine a channel assignment that limits the amount of aggregate new interference for any station.

13. It would be significantly more complicated and, as a result, time-consuming to consider the amount of aggregate interference from all sources that a station may receive on its provisional channel during the bidding process, as would be necessary to implement a cap on aggregate interference. Specifically, after the repacking process identifies a provisional channel assignment for a station that is feasible—based on the pairwise constraints—the aggregate interference of the provisional assignments for all of the other stations that may need to be assigned a channel (non-participating stations and stations that continue to participate in the bidding) would have to be determined in a separate step. If the cap were exceeded, then the assignment would have to be disallowed and a new assignment identified. This iterative process would have to be repeated until either a provisional channel assignment were found that satisfies the cap or all possible assignments were eliminated. The same analysis would need to be performed repeatedly for each station that continues to participate in the bidding process, leading to possibly an exponential number of feasibility checks for each round of the auction. Such an approach would deprive the repacking feasibility checker of its speed and threaten the success of the incentive auction.

14. Despite the results of the staff analysis discussed, broadcasters argue that the Commission must adopt the proposed cap under the ''all reasonable efforts'' mandate because doing so would not significantly increase repacking constraints. The Commission disagrees. As explained in the *Incentive Auction R&O,* the Commission interprets the statutory mandate in light of the other objectives of the Spectrum Act, including the goal of repurposing spectrum for new, flexible uses. Requiring steps that would impede the Commission's ability to conduct a successful auction would sacrifice this goal and therefore is not ''reasonable'' within the meaning of the statute given the results of the staff analysis. The Commission adopted measures that will effectively address broadcasters' concerns regarding aggregate new interference. The Commission has not identified, and no commenter has suggested, a means of implementing the proposed cap without compromising the speed of the bidding process, which is critical to conducting a successful auction. Under the circumstances, the Commission concludes that the statute does not require adoption of the proposed cap.

15. The Commission also rejects NAB's assertion that failure to adopt the proposed cap would undermine the voluntariness of the reverse auction. The Commission does not believe—and NAB has not demonstrated through record evidence—that the possibility of an increase in aggregate new interference, such as the remote possibility predicted in the staff study, would so devalue a broadcaster's license (or increase its costs) that it would coerce a broadcaster to participate in the auction.

Proposed Cap on Any New Interference to Certain Stations

16. The Commission also declined NAB's suggestion to adopt a cap on any new interference to stations that are currently experiencing ten percent or more interference within their service areas. As explained in the *Incentive Auction R&O,* the Commission interprets section 6403(b)(2) of the Spectrum Act ''to require efforts to preserve service to those viewers who had access to a station's signal within its protected coverage area as of'' the statutory date. Accordingly, it base comparative evaluations of interference on the population that a station was predicted to serve as of the statutory date. Thus, the interference level that the stations in question were experiencing as of the statutory date is their baseline for repacking purposes. Adopting NAB's suggestion would increase the constraints on the repacking process, hindering the Commission's ability to repack TV spectrum. In addition, the Commission does not believe the statutory ''all reasonable efforts'' mandate warrants granting these stations greater interference protection than the current rules. The Commission therefore declines to treat these stations differently from other stations in the repacking process.

Requested Cap on Viewer Losses Due to Channel Reassignments

17. In a recent *ex parte* filing, NAB criticizes the staff's analysis for ignoring potential terrain losses due to channel reassignments that could cause some stations to lose viewers, and argues for the first time that the Commission must adopt ''an aggregate cap on . . . the percentage decrease in population served as a result of repacking during the incentive auction process.'' The Commission declines to address NAB's new requested cap here. Prior to NAB's recent filing, no commenter proposed such a cap. Rather, NAB and others advocated a cap on aggregate interference between stations, and the purpose of the staff's analysis was to study the potential for such interference. The interference cap that NAB previously advocated would have no effect whatsoever on terrain losses, because such losses are not caused by interference between stations. Thus, NAB's request for an aggregate cap on population loss is outside the scope of this item.

18. Although the Commission declines to address NAB's requested new cap here, consistent with the Commission's decision above to use optimization techniques to seek to avoid final channel assignments that would result in aggregate new interference of more than one percent, the Commission concludes that it should use optimization techniques to seek to avoid final channel assignments that would result in significant viewer losses due to terrain losses. The Commission did not decide now on an optimization technique to carry out this objective, because unlike interference between stations, terrain losses can be avoided by optimizing for various factors. For example, minimizing channel moves will avoid terrain losses while also reducing broadcaster relocation costs, because a station that stays on the same channel will not experience terrain losses. Similarly, preferring moves to channels lower in the UHF band will avoid terrain losses while also serving the Commission's goal of repurposing UHF spectrum contiguously from channel 51 down. The Commission will seek comment on optimization factors for the final channel assignment scheme, including factors that would help both directly and indirectly to avoid final channel assignments that would result in significant viewer losses due to terrain losses, in the forthcoming *Incentive Auction Comment PN.* Although different measures may be necessary to protect viewers from loss of service due to terrain losses and interference, consistent with the statutory mandate we will make all reasonable efforts to preserve television service to all existing viewers.

ISIX Methodology and Input Values To Determine 600 MHz Band Wireless License Area Impairments During the Incentive Auction

19. The Commission adopts here the ISIX Methodology and input values proposed in the *ISIX PN,* see *Office of Engineering and Technology Seeks to Supplement the Incentive Auction Proceeding Record Regarding Potential Interference Between Broadcast Television and Wireless Services, Public Notice,* 29 FCC Rcd 712 (2014) with certain modifications, for use during the incentive auction. The ISIX Methodology is set forth in detail in Appendix A (Technical Appendix) of the Second R&O. The ISIX Methodology and input values will be used during the auction to estimate the extent to which 600 MHz Band wireless license areas may be ''impaired'' due to predicted interference to, or from, broadcast television stations assigned to the 600 MHz Band as a result of market variation. ''Impaired'' license areas may include ''infringed'' and/or ''restricted'' areas. An ''infringed'' area is one where wireless operation is predicted to receive harmful interference from a television station that is placed in the 600 MHz Band. Wireless licensees will be free to operate in infringed areas but will assume the risk of receiving interference from a television station. A ''restricted'' area is one where wireless operations would be predicted to cause harmful interference to a television station that is placed in the 600 MHz Band, depending on how the wireless operations are deployed.

20. Because new 600 MHz Band wireless operations will not be deployed until after the incentive auction, the ISIX Methodology and input values the Commission adopted in this Order necessarily rely on a number of assumptions, all of which are described in the *ISIX PN* and the Technical Appendix. To the extent that the Commission changed any of the assumptions proposed in the *ISIX PN,* the basis for such changes is explained below. The Commission also addressed commenters' objections to certain aspects of the ISIX Methodology and input values. The results of the ISIX Methodology and input values adopted in the *Second Report and Order* may be used for several purposes during the incentive auction. The Commission will address these uses in the forthcoming *Comment PN* on auction procedures. Importantly, the Commission does not determine in this Order how the ISIX Methodology and input values will be applied following the incentive auction.

21. Although the ISIX Methodology may be characterized as more complex than the distance-based approach advocated by some commenters, the Commission concludes that the ISIX Methodology's ability to account for different inter-service interference scenarios, local terrain obstacles and other factors make it significantly more spectrally efficient than a distance-based approach, and these benefits outweigh the costs of greater complexity. Also, its granularity is better suited to the requirements of conducting the incentive auction than a distance-based approach. Accordingly, the Commission adopts the ISIX Methodology.

Background

22. In the *Incentive Auction R&O,* the Commission adopted a flexible band plan framework that accommodates market variation. Market variation occurs where broadcast stations remain on spectrum that is repurposed for wireless broadband under the 600 MHz Band Plan. The Commission explained that accommodating market variation is necessary because the amount of spectrum recovered along the Canadian and Mexican borders and in some markets may vary from that recovered in most markets nationwide. Accommodating market variation will allow for avoiding limits to the amount of spectrum repurposed across the nation to what is available in the most constrained market.

23. Broadcasters and several other industry participants raised concerns over the potential for inter-service interference created by market variation. This potential interference results because, in constrained markets where broadcast television stations are assigned to channels within the 600 MHz Band, television services and wireless services will be operating in close geographic proximity on either the same or adjacent frequencies. Some commenters proposed fixed geographic separation distances to mitigate such potential interference.

24. On January 29, 2014, the Commission's Office of Engineering and Technology (OET) released a Public Notice seeking comment on an alternative to the fixed separation distance methodology to address inter-service interference. The ISIX Methodology is intended to accommodate market variation in a more spectrally efficient manner than fixed separation distances. The rationale underlying the proposed ISIX Methodology was that a fixed geographic separation distance approach would be spectrally inefficient because it would group together different inter-service interference scenarios (*e.g.,* wireless base station to television receiver, television transmitter to wireless user equipment, etc.) and apply separation distances based on the worst case scenario, without considering factors such as technical characteristics (*i.e.* antenna height, power), terrain variability, and density of population.

25. The *ISIX PN* discussed the varying degrees of spectral overlap between broadcast television and wireless services will impact to different degrees the potential for harmful interference between the two services. Under the 600 MHz Band Plan adopted in the *Incentive Auction R&O,* six megahertz broadcast television channels will be repurposed as five megahertz wireless blocks. The difference in channel bandwidth (six vs. five megahertz) means that the wireless spectrum blocks will not perfectly align with the existing television channels and, where market variation exists, there will be varying degrees of spectral overlap between the channels. As the wireless spectrum block moves from complete overlap in frequency with a television channel to an edge-to-edge separation of five megahertz, the level of undesired signal that the victim receiver can tolerate without experiencing interference increases. The *ISIX PN* proposed to define ''co-channel operations'' as any spectral overlap between a wireless spectrum block and a television channel in one megahertz increments ranging from +5 (complete overlap) to +1 megahertz, and ''adjacent channel operations'' as a wireless spectrum block and television channel that do not overlap but are separated by less than five megahertz (edge to edge separation of five megahertz or less).

26. The *ISIX PN* outlined four scenarios of potential interference when broadcast television and wireless operations are co-channel or adjacent channel in nearby markets: (1) Digital television (DTV) transmitter to wireless base station (Case 1); (2) DTV transmitter to wireless user equipment (Case 2); (3) wireless base station to DTV receiver (Case 3); and (4) wireless user equipment to DTV receiver (Case 4).

Digital Television to Wireless Interference (Cases 1 and 2)

27. The Commission adopted the ISIX Methodology and input values as proposed in the *ISIX PN* for use during the incentive auction to predict interference from DTV transmitters to wireless base stations (Case 1) and wireless user equipment (Case 2), except that it will not consider clutter loss for Case 2. While wireless commenters

support the proposed consideration of clutter loss for Case 2, the Commission determined that considering clutter loss would not improve the accuracy of the ISIX Methodology. The resolution of the clutter database is 30 meters and, therefore, every grid cell would have more than 4,000 associated clutter values. The one clutter value selected in each cell would not be representative of the entire cell and thus would fail to provide for an accurate assessment of the interference environment.

28. The Commission will use the proposed F(50,50) statistical measure to predict the strength of an interfering television signal within the wireless license area for Cases 1 and 2 rather than the F(50,10) measure advocated by broadcasters. The F(50,50) measure assumes that the DTV signal will be strong enough to interfere with the wireless base station or wireless user equipment in 50 percent of the locations within the wireless license area 50 percent of the time; the F(50,10) measure would assume that the interfering signal will be strong enough to interfere in 50 percent of the locations 10 percent of the time. The Joint Broadcasters support use of the F(50,10) measure as more conservative and more consistent with Commission practice. The Commission concludes that the F(50,50) measure is more appropriate for use in predicting interference from DTV signals to wireless operations during the auction. First, the F(50,50) measure will not risk harming broadcasters because it will be applied only during the incentive auction and only to predict interference to wireless operations from television stations for auction-related purposes, not to protect television signals. Second, the majority of wireless providers, who have the greatest stake in the accuracy of predicted inter-service interference to wireless operations, support use of the F(50,50) measure, supporting the conclusion that it will provide a reasonably accurate assessment of such interference. Third, use of the F(50,50) measure is appropriate in this context because various techniques are available to wireless operators to avoid harmful interference to wireless base stations that are not available to television stations or viewers. Accordingly, the Commission disagrees with the Joint Broadcasters that use of the F(50,50) measure is inconsistent with Commission practice in predicting interference between DTV stations. Under the circumstances, the Commission concludes that use of the more conservative F(50,10) measure is neither necessary nor consistent with the Commission's goals for the incentive auction.

29. The Commission declines to adopt Qualcomm's suggested parameters for wireless user equipment in lieu of the parameters proposed in the *ISIX PN.* While the antenna gain value suggested by Qualcomm may reflect today's smartphones, the Commission expects other wireless devices to be used in the 600 MHz Band, like tablets or personal Wi-Fi hotspots, that could have either a higher antenna gain or a better antenna efficiency and thus be more susceptible to harmful interference. The Commission finds it appropriate to account for the types of devices that will most likely be used in the 600 MHz Band. Qualcomm also claims that the proposed parameter value for noise figure should be increased from 7.5 dB to 9 dB. However, the proposed value accounts for factors in addition to receiver noise that should be considered when calculating an effective noise figure. Therefore, the Commission declines to adopt Qualcomm's suggested values for wireless user equipment.

30. The Commission declines to adopt the Joint Broadcasters' suggested fixed distance-based approach for Cases 1 and 2. The Joint Broadcasters' approach for Case 1 (television transmitter to wireless base station) would create unreasonably large zones where wireless operations would be deemed ''impaired'' by interference because their approach does not account for specific terrain obstacles that mitigate the potential for interference from television stations to wireless operations. As a result, it would significantly increase the predicted impairments to wireless license areas and exclude from the forward auction spectrum that could otherwise be offered for wireless services if impairments were assessed more accurately. For example, under the Joint Broadcasters' proposal, a television station in Los Angeles could be predicted to interfere with wireless operations in Las Vegas. In contrast, the ISIX Methodology would evaluate the effect of terrain on the propagation of the interfering television signal. As a result, areas shielded by terrain, such as mountains, would not be identified as impaired by potential interference that is not likely to occur in those locations. Applying the ISIX Methodology in the example above, wireless operations in Las Vegas would not be considered impaired because of the shielding provided by the San Gabriel and San Bernardino mountain ranges. As a result, a wireless license in Las Vegas would be deemed unimpaired because of this terrain shielding and can therefore be auctioned even when there is a television station co-channel or adjacent channel in Los Angeles. The approach the Commission adopted will assess the interference environment and wireless license area impairments significantly more accurately in Case 1 than the Joint Broadcasters' suggested approach of a generic separation distance.

31. For Case 2 (television transmitter to wireless user equipment), the Joint Broadcasters' proposed five-kilometer separation distance would not adequately reflect the potential impairment to a wireless license area. The Joint Broadcasters conflate their proposed separation distances for Case 1 with those for Case 2 and assume that the Case 1 distances will preclude wireless user equipment from operating near a television station. As stated, however, the Case 1 interference scenario will only occur if a television station is placed in the 600 MHz uplink spectrum, while Case 2 will only occur if a television station is placed in the 600 MHz downlink spectrum. In addition, wireless user equipment is more sensitive than television receivers, and the high power and height of typical DTV transmitters require separation distances that can be much greater than five kilometers. However, adopting a generic distance-based separation to provide additional protection for wireless user equipment would raise the same concerns discussed with regard to Case 1. Therefore, the approach of predicting the specific locations (on a two-kilometer grid) where the interfering DTV field strength exceeds the thresholds will provide wireless providers with more accurate information as to wireless license area impairments.

32. Although the Commission recognizes that the ISIX Methodology it adopts may be more complex than a fixed distance-based approach, the Commission concludes that the added complexity of this approach is justified by its benefits. The ISIX Methodology's granularity, tailored approach to different interference scenarios, and ability to account for factors that will mitigate interference in individual cases will generally lead to more accurate interference predictions. This is critical to meeting the Commission's goals for the incentive auction because overestimating the extent of wireless license area impairments may limit the ability to repurpose spectrum for new uses through the auction. Moreover, more accurate predictions and more granular data will allow for more informed decisions, both for the Commission in determining whether to

auction certain licenses and for auction participants in making bidding decisions. The Commission also notes that, contrary to the Joint Broadcasters, most commenters support the ISIX Methodology. For Cases 1 and 2, the Commission therefore concludes that the benefits of the ISIX Methodology's increased accuracy over an oversimplified fixed distance-based approach outweigh its costs in terms of additional complexity.

Wireless Base Station to Digital Television Receiver (Case 3)

33. The Commission adopted the ISIX Methodology and input values as proposed in the *ISIX PN* for use during the incentive auction to predict interference from wireless base stations to DTV receivers (Case 3), except that (1) the Commission adopted slightly higher D/U ratios (by 1 dB) for co-channel operations based on the measurements conducted by the staff and CEA, and (2) the Commission will not consider clutter loss.

34. *D/U ratios.* The *ISIX PN* was premised on the assumption that ATSC DTV and LTE signals are sufficiently similar that the D/U ratios in the rules for television-to-television interference can be used in predicting interference from wireless base stations to television receivers. In response to concerns raised by some commenters, OET measured the susceptibility of a number of DTV receivers to interference from LTE signals, and CEA conducted additional measurements with six different DTV receivers. The Commission concluded that the record supports the D/U ratios proposed in the *ISIX PN* for adjacent channel interference based on the measurements conducted by staff and CEA. However, based on the measurement data, LTE signals create slightly more co-channel interference to DTV reception than other DTV signals. The Commission concludes that the D/U ratios proposed in the *ISIX PN* for co-channel interference should be increased by 1dB from 15 dB to 16 dB in light of this data. Therefore, the Commission adopted the following D/U ratios for different degrees of spectral overlap in Case 3. This adjustment will result in a more accurate determination of impairments to co-channel wireless operations to any broadcast television stations that are assigned to the downlink 600 MHz Band spectrum as a result of market variation. The D/U ratios are accordingly adjusted as shown in Table 1, paragraph 43 of the *Second Report* and *Order.*

35. While one receiver OET measured was predicted to receive interference at the D/U ratios the Commission adopted in this Order, it concludes that this result does not undermine the Commission's decision. This receiver is a digital-to-analog converter box. While the Commission recognizes that such converter boxes remain in use and are still commercially available, the analog-only television receivers they are used with are reaching the end of their life cycles. Television receivers with digital tuners have no need of such converter boxes, and new television receivers have been required to include digital tuners since July 2004. Thus, most television receivers purchased since then have no need for a converter box. The Commission declines to adjust the D/U ratios it adopted based on the susceptibility to LTE signal interference of obsolete analog-to-digital converter boxes, the vast majority of which will no longer be in service during and after the 39-month Post Auction Transition Period.

36. Although broadcasters argue for more measurements, no commenter disagrees that DTV and LTE signals behave similarly because both have noise-like emission characteristics. The measurement data from OET and CEA encompasses most new models of DTV receivers, as well as a representative sample of older models. With the exception of the one digital-to-analog converter box that is no longer likely to be in use within a few years, none of the DTV receivers OET tested was susceptible to LTE signal interference at the D/U ratios adopted in this Order. Testing additional receivers under different conditions, as broadcasters advocate, would delay this proceeding, and therefore the auction, without contributing meaningfully to the data in the record. Accordingly, the Commission concludes that the D/U ratios it adopted are sufficient to protect DTV receivers from LTE signal interference.

37. The Commission rejects claims that the measurement data in the record is not reliable because it does not consider factors such as multiple LTE interferers, third-order intermodulation (IM3) or taboo interference, and splatter. The Commission's rules governing DTV-to-DTV interference do not address these factors, yet there is no evidence that the rules fail to adequately protect DTV signals as a result. Likewise, OET–69 does not consider taboo interference in its calculations but only considers the interference protections provided in the rules. Equipment manufacturers are aware of these factors and are expected to consider them when designing their receiver products. Because the Commission's existing rules do not include provisions to protect DTV signals from the effects of multiple DTV interferers, IM3 or splatter, the Commission declines to account for such factors in the D/U ratios adopted for Case 3, and concludes that the measurement data in the record is reliable despite the lack of information regarding these factors.

38. While the Commission recognizes the asymmetry in the performance of DTV receivers, the D/U values adopted in the ISIX Methodology are sufficiently conservative to protect against interference from wireless signals on co-channel and adjacent-channel frequencies above or below a received television channel. In addition, the adopted values will protect adjacent-channel operations, by several dB or more. Accordingly, the Commission adopts the values for OFR set forth in Table 9 of the *ISIX PN.*

39. *Clutter Loss.* The Commission declined to adopt the proposed use of clutter loss for Case 3 for reasons similar to those set forth above with regard to Case 2. Clutter loss has not been used in the context of interference between television stations, and the Commission concluded that application of a single clutter value in a four-square kilometer area would not improve the accuracy of the ISIX Methodology.

40. *Propagation Model.* The Commission rejects suggestions that the ISIX Methodology use the Hata or the free space propagation model for Case 3 instead of the Longley-Rice model. The Commission has relied on the Longley-Rice model to predict television coverage and interference for more than fifteen years, and that model is widely accepted for use at the frequencies in the 600 MHz Band.

41. *Fixed Distance-Based Approach.* The Commission also rejects Joint Broadcasters' fixed distance-based approach for Case 3. Their approach predicts wireless license area impairments greater than those predicted by the ISIX Methodology in some cases, whereas in others it would produce similar results or result in smaller impairments. The critical difference between the two approaches for Case 3, however, is the granularity of the data. The fixed geographic distances under the Joint Broadcasters' approach are not easily converted to the ''grid-by-grid'' data needed to evaluate potential harmful interference to television stations in the initial optimization process during the auction. The ISIX Methodology provides for a cell-by-cell determination of license impairments which will allow the Commission to make more informed decisions about the appropriate clearing targets for the reverse auction and

which wireless spectrum blocks to auction in the forward auction, and also provide additional certainty to bidders in the forward auction. Therefore, the Commission concludes that the ISIX Methodology is better suited to the requirements of conducting the incentive auction than a distance-based approach for Case 3.

42. *Technical Parameters.* The Commission rejected broadcasters' claims that the parameter values for wireless base station power and height proposed for Case 3 in the *ISIX PN* are inconsistent with real-world wireless facilities. These typical values were obtained from advisory committees and industry submissions in the record. The Commission has previously considered typical operating parameters in predicting interference, rather than assuming the maximum permissible levels authorized under the Commission's rules. As Sprint notes, the typical parameters may not precisely reflect the parameters that a wireless provider would use in actual deployment, but they are reasonable for purposes of modeling. The Commission emphasizes that the use of typical values for Case 3 will be restricted to the incentive auction, when actual values will not be available because 600 MHz Band services will not be deployed yet.

43. For purposes of the auction, the ISIX Methodology assumes an Effective Radiated Power (ERP) level of 120 W/MHz for a wireless base station. This power level, which is supported by data in the record, is based on a wireless base station operating with two LTE transmitters, rated at 40 watts (W) each and transmitting at their maximum capable output power (ignoring network effects such as power control) and an antenna gain of 15 dBi. The 15 dBi value is based on manufacturer data on panel antennas designed for operation in frequency bands above and below the 600 MHz Band. An antenna with 15 dBi gain used with two 40 W transmitters and a line loss of 1 dB produces an ERP of 1200 W in a 10 MHz LTE channel, or 120 W/MHz ERP. To simulate the effect on one 6 MHz television channel of wireless operations transmitting across contiguous adjacent 5 MHz wireless blocks, OET multiplied the ERP/MHz by 6, so that the ERP in a 6 MHz channel would be 720 watts.

44. The antenna Height Above Average Terrain (HAAT) value of 30 meters adopted for use in the ISIX Methodology is consistent with real-world network information incorporated in the Commerce Spectrum Management Advisory Committee (CSMAC) Final Report. This report specifies 30 meters as the typical HAAT for base stations in urban/suburban areas where inter-service interference would most likely occur. The wireless industry also supports this assumption. The Joint Broadcasters' analysis overestimates the typical wireless base station antenna height because it is based on the overall height above ground level for the towers hosting a wireless antenna, rather than the height at which the wireless antennas are actually mounted on each tower. Wireless antennas are typically side-mounted on platforms or other supporting structures, resulting in a much lower antenna height than the overall tower height. Moreover, while the Joint Broadcasters' analysis relies on data from American Tower, one of the largest tower management entities in the United States, it excludes rooftop, on-building, and broadcast tower mounted sites. The Commission believes that the typical values adopted are appropriate for modeling a 600 MHz Band wireless network.

45. *''Error Code 3'' Messages.* The Commission disagrees with the Joint Broadcasters that it should assume service in cells where an ''error code 3'' message appears, rather than using the predicted field strength at such locations. The Joint Broadcasters' claim that the proposed approach departs from the Commission's treatment of error warnings ignores the fact that the Commission has treated error warnings differently depending on context. In the *Incentive Auction R&O,* the Commission decided to assume service in cells where an ''error code 3'' message appears, because doing so is consistent with the traditional assumption for purposes of applying the OET–69 methodology that service is available throughout a station's coverage area and that broadcasters locate and configure their transmitters to maximize coverage. In predicting Case 3 interference, however, the Commission found that different treatment of ''error code 3'' messages is appropriate. If service were to be assumed in the presence of an error warning, the cell in question would be treated as having interference-free service, meaning that potential inter-service interference would be ignored. The result would be a failure to check for inter-service interference at locations where the DTV signal could be subject to interference. Instead by using the predicted field strength at such locations, the Commission ensures that the ISIX Methodology evaluates service and potential interference in the flagged cells just as it would in non-flagged cells. The Commission's approach does not alter or otherwise affect the treatment of error warnings in applying the OET–69 methodology as set forth in the *Incentive Auction R&O.*

46. *Aggregate Wireless Interference to DTV.* The Commission declines to consider the potential impact of interference from multiple wireless base stations on DTV reception when applying the ISIX Methodology for Case 3 during the incentive auction. Broadcasters express concern that LTE signals could combine at the point of DTV signal reception, increasing the potential for interference. They urge the Commission to use either a simple direct summation of signals or the Root Square Sum (RSS) method for calculating interference from multiple DTS transmitters under the current rules. The Commission concludes that neither of these approaches is appropriate here because the ISIX Methodology necessarily relies on hypothetical placement of wireless base stations every ten kilometers with no regard to whether actual operation on those locations is desirable or possible. First, the hypothetical wireless base stations are placed even within the contours of television stations—a situation that will not occur in reality. Therefore, aggregating the interference from those hypothetical base stations would not provide any meaningful information and would not improve the accuracy of the ISIX Methodology. The Commission also observes that in order to manage interference within their systems, wireless providers may not operate on a given frequency block simultaneously at all of their cell sites. Thus, aggregating signals from all of the hypothetical base stations would not improve the estimates of impairments, would tend to produce a ''worst case'' scenario, and overestimate potential interference. Moreover, the patterns of frequency use that would be optimal for wireless providers are not clear because they would vary with terrain and other considerations. As a result, it would not improve the accuracy of the impairment estimates to assume a standard frequency re-use pattern for the ISIX methodology. The Commission also notes that aggregating the signal strengths from each hypothetical wireless base station within the 500 kilometer culling distances of a co-channel or adjacent channel television station could result in impairing all, or nearly all, of the locations considered. That is because locations whose own contributions to interference would be below the D/U threshold could be considered sources of interference when interference is aggregated with other hypothetical base stations. Also it might

be more useful for wireless providers to have impairment information based on the individual wireless base station. Finally, the plan to consider a whole county impaired if even one of the hypothetical ten-by-ten kilometer cells located in that county is predicted to cause interference will provide a conservative approach in establishing impairments that should address Joint Broadcasters' concerns. Therefore, because the RSS method would not improve the accuracy of the estimates of interference potential during the auction, it will not be used when determining impairments to the wireless licenses during the auction.

Wireless User Equipment to Digital Television Receiver (Case 4)

47. The Commission adopted fixed geographic separation distances for Case 4. Specifically, wireless user equipment (*i.e.* mobile and portable devices) will be prohibited from co-channel or adjacent-channel operations within a television station's contour and within a set distance from the station's contour. The Commission determined that the appropriate distance is five kilometers for co-channel operations, and one-half kilometer for adjacent-channel operations.

48. The Commission finds that a simple, fixed-distance approach is warranted for Case 4 because it involves short distances only. Wireless user equipment transmits at relatively low power and its location is usually closely bound to the vicinity of its associated base station. In addition, outdoor operation of wireless user equipment usually involves heights above ground on the order of 1.5 meters, resulting in significant attenuation of signals by ground clutter. Wireless user equipment operating in buildings may be significantly higher than 1.5 meters, but signals are significantly attenuated by walls indoors. As a result of these factors, the potential for wireless user equipment to cause harmful interference to television service operating co-channel or adjacent channel occurs only at short distances of a few kilometers. At these distances, the number of grid cells in a television station's coverage area that could be affected by wireless user equipment is limited to a few cells in the interference range of the devices rather than all of the cells in the station's coverage area. In addition, the Longley-Rice Model is not designed for distances less than a kilometer and relies on either free-space or line-of-sight predictions for such distances. The Commission also observed that use of site-by-site Longley-Rice evaluations for Case 4 would necessitate the development of complex and detailed maps of locations where user equipment can operate.

49. In view of these considerations, the Commission finds that a separation distance approach can adequately protect that station's service. Such an approach is also more administratively efficient for wireless service licensees because it will avoid the need for computerized evaluations required by the Longley-Rice model and maps of locations where wireless user equipment may operate. Instead, wireless providers will be able to design their networks to avoid operation of wireless end user equipment within the contour of television station and within the specified separation distances. For these reasons, the Commission concludes that applying the Longley-Rice propagation model is not warranted for Case 4, because it would increase the ISIX Methodology's complexity without resulting in more accurate interference predictions. The Commission therefore will use a straightforward distance separation approach for Case 4. As described in the Technical Appendix of the Second Report and *Order,* the Commission finds that the appropriate model for the short distances associated with Case 4 is the OET TM91–1 propagation model. Using this model the Commission calculated that broadcast television service will be protected from interference from wireless user equipment if such devices are not permitted to operate within the contours of the television station and within five kilometers if co-channel or a half kilometer if operating on the adjacent channel.

The Spectrum Act Does Not Preclude Use of the ISIX Methodology and Input Values To Predict or Prevent Inter-Service Interference

50. The Commission rejects the Joint Broadcasters' claim that section 6403(b)(2) of the Spectrum Act limits its authority to adopt the ISIX Methodology and input values to address inter-service interference. Section 6403(b)(2) requires the Commission, in ''making any reassignments or reallocations,'' to ''make all reasonable efforts to preserve, as of [February 22, 2012], the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69. . . .'' The Joint Broadcasters argue that the Commission's efforts ''to preserve'' broadcasters' coverage area and population served from inter-service interference will violate section 6403(b)(2) unless it used ''the methodology described in OET Bulletin 69. . . .''

51. The Commission disagrees. As explained in the *Incentive Auction R&O,* the coverage area and population served of broadcasters, including any assigned to spectrum in the 600 MHz Band, must be ''determined'' using ''the methodology described in OET Bulletin 69,'' as required by section 6403(b)(2). The ISIX Methodology and input values the Commission adopted in this Order (for use during the auction) will not be used to ''determine[]'' coverage area and population served. Rather, they will be used ''to preserve'' the coverage area and population served that has already been ''determined'' through the methodology set forth in the *Incentive Auction R&O.* These efforts are not restricted by the statute's reference to ''the methodology described in OET Bulletin 69.

Procedural Matters

Final Regulatory Flexibility Analysis

52. As required by § 603 of the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 603, the Commission has prepared a Final Regulatory Flexibility Analysis of the possible economic impact on small entities of the policies and rules adopted in the *Second Report and Order.* This Final Regulatory Flexibility Analysis is set forth in Appendix F of the Second Report and Order.

53. The *Second Report and Order* contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. 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 previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

54. The Commission has assessed the effects of the policies adopted in the *Second Report and Order* with regard to information collection burdens on small business concerns, and find that these policies will benefit companies with fewer than 25 employees by providing them with a safeguard in the unlikely event of aggregate new interference in excess of one percent. In addition, we

have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA attached to the *Second Report and Order* as Appendix F.

Final Regulatory Flexibility Analysis

55. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in ET Docket No. 12–268.[2] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA.[3] This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

Need for, and Objective of, the Second Report and Order

56. In the *Second Report and Order,* the Commission addresses several outstanding issues related to the *Incentive Auction R&O.*[5] First, we address and reject proposals for additional limits on any new interference between television stations as result of the repacking process.[6] Second, we establish a methodology and the associated input values to predict inter-service interference between television and wireless services in certain areas for use during the incentive auction (ISIX Methodology).[7]

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

57. No comments were filed in direct response to the IRFA.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

58. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

59. 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 proposed rules, if adopted.[8] 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.[9] 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 SBA.[10]

60. *Television Broadcasting.* This economic census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.''[11] The SBA has created the following small business size standard for Television Broadcasting firms: Those having $38.5 million or less in annual receipts.[12] The Commission has estimated the number of licensed commercial television stations to be 1,388.[13] In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $38.5 million or less.[14] We therefore estimate that the majority of commercial television broadcasters are small entities.

61. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included.[15] Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

62. In addition, the Commission has estimated the number of licensed noncommercial educational (''NCE'') television stations to be 396.[16] These stations are non-profit, and therefore considered to be small entities.[17]

63. There are also 2,414 LPTV stations, including Class A stations, and 4,046 TV translator stations.[18] Given the

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996), and the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504 (2010).

[2] *See Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions,* GN Docket No. 12–268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012).

[3] Additional comment on the specific proposals addressed in the *Second Report & Order* was sought with the issuance of three separate Public Notices. *See Incentive Auction Task Forces Releases Updated Constraint File Data Using Actual Channels and Staff Analysis Regarding Pairwise Approach to Preserving Population Served,* GN Docket No. 12–268, ET Docket No. 13–26, Public Notice, 29 FCC Rcd 5687 (2014). *See also Office of Engineering and Technology Seeks to Supplement the Incentive Auction Proceeding record Regarding Potential Interference Between Broadcast Television and Wireless Services,* GN Docket No. 12–268, ET Docket No. 14–14, Public Notice, 29 FCC Rcd 712 (2014); *Office of Engineering and Technology Seeks Comment on Measurements of LTE into DTV Interference,* Public Notice, GN Docket No. 12–268, ET Docket No. 14–14, DA 14–852 (2014).

[4] *See* 5 U.S.C. 604.

[5] *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* GN Docket No. 12–268, Report and Order, 29 FCC Rcd 6567 (2014) (*Incentive Auction R&O*).

[6] *See id.* at 6651, para. 182. The Commission adopted a 0.5 percent ''pairwise'' or station-to-station limit on any new interference as a result of the repacking process in the *Incentive Auction R&O. See id.* at 6649–51, paras. 179–81.

[7] *See id.* at 6605–6, paras. 82–84. The Commission will address the specific uses to be made of the interference predictions in the forthcoming Comment PN on final auction procedures. *See* note 79, para. 23 of the Second Report and Order.

[8] *Id.* at 603(b)(3).

[9] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[10] Small Business Act, 15 U.S.C. 632 (1996).

[11] U.S. Census Bureau, *2012 NAICS Definitions: 515120 Television Broadcasting, http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012* (last visited Mar. 6, 2014).

[12] 13 CFR 121.201 (NAICS code 515120) (updated for inflation in 2010).

[13] *See* FCC News Release, Broadcast Station Totals as of December 31, 2013 (rel. Jan. 8, 2014), *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0108/DOC-325039A1.pdf.*

[14] We recognize that BIA's estimate differs slightly from the FCC total given the information provided above.

[15] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[16] *See* FCC News Release, Broadcast Station Totals as of December 31, 2013 (rel. Jan. 8, 2014), *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0108/DOC-325039A1.pdf.*

[17] *See generally* 5 U.S.C. 601(4), (6).

[18] *See* FCC News Release, Broadcast Station Totals as of December 31, 2013 (rel. January 8,

nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

64. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 912 had less than 500 employees and 17 had more than 1000 employees. Thus, under that size standard, the majority of firms can be considered small.

65. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees. Data contained in the 2007 U.S. Census indicate that 492 establishments operated in that industry for all or part of that year. In that year, 488 establishments had fewer than 500 employees; and only 1 had more than 1000 employees. Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

66. *Wireless Telecommunications Carriers (except satellite).* The Census Bureau defines this category as follows: ''This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.'' [19] The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except Satellite). The size standard for that category is that a business is small if it has 1,500 or fewer employees.[20] For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.[21] Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.[22] Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (''SMR'') Telephony services.[23] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[24] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

67. The *Second Report and Order* provides that, if a full power or Class A station is predicted to receive aggregate new interference above one percent on the final channel assigned to it following the repacking process, it may file an application proposing an alternate channel or expanded facilities in a priority filing window, along with a limited number of other stations that have been assigned the same priority. This opportunity will be available to any station entitled to protection in the repacking process that is predicted to experience aggregate new interference in excess of one percent, regardless of whether that station was reassigned to a new channel in the repacking process.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

68. 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 (among others): (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.[25]

69. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. Moreover, the revisions the Commission adopts should benefit small entities by providing them with a safeguard in the event of aggregate new interference above one percent.

Report to Congress

70. The Commission will send a copy of the *Second Report and Order,* including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[26] In addition, the Commission will send a copy of the *Second Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA.

71. The Commission will send a copy of the *Second Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

72. Pursuant to the authority found in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, 332, and 403 of the Communications Act of 1934, as amended, and sections 6004, 6402, 6403, 6404, and 6407 of Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 332, 403, 1404, 1452, and 1454, and § 1.2 of the Commission's rules, 47 CFR 1.2, the *Second Report and Order, is adopted. It is further ordered* that the Commission's rules *are hereby amended* as set forth in Appendix B of the Second Report and Order.

2014), *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0108/DOC-325039A1.pdf.*

[19] U.S. Census Bureau, *2012 NAICS Definitions: 517210 Wireless Telecommunications Carriers (except Satellite), http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2012* (last visited Mar. 6, 2014).

[20] 13 CFR 121.201 (NAICS code 517210).

[21] U.S. Census Bureau, Table No. EC0751SSSZ5, *Information: Subject Series—Establishment and Firm Size: Employment Size of Firms for the United States: 2007* (NAICS code 517210), *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5.*

[22] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with 1000 employees or more.

[23] *See Trends in Telephone Service* at Table 5.3.

[24] *See id.*

[25] 5 U.S.C. 603(c).

[26] *See* 5 U.S.C. 801(a)(1)(A).

73. The rules adopted herein *will become effective* January 22, 2015, except for §§ 73.3700(b)(1)(iv)(B), 73.3700(b)(2)(i) introductory text, and 73.3700(b)(2)(ii) of the rules which contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13, that are not effective until approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing OMB approval and the effective date of this rule.

74. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Report and Order* in GN Docket No. 12–268, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

75. The Commission *shall send* a copy of this *Second Report and Order* in GN Docket No. 12–268 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Communications equipment, Education, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 2. Section 73.3700 is amended by revising paragraphs (b)(1)(iv), (b)(2)(i) introductory text, and (b)(2)(ii) to read as follows:

§ 73.3700 Post-incentive auction licensing and operation.

* * * * *

(b) * * *

(1) * * *

(iv) *Priority filing window.* (A) The licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station that, for reasons beyond its control, is unable to construct facilities that meet the technical parameters specified in the Channel Reassignment Public Notice, or the permissible contour coverage variance from those technical parameters specified in paragraph (b)(1)(ii) or (iii) of this section, may request a waiver of the construction permit application deadline specified in paragraph (b)(1)(i) no later than 30 days prior to the deadline. If its waiver request is granted, the licensee will be afforded an opportunity to submit an application for a construction permit pursuant to paragraph (b)(2)(i) or (ii) of this section in a priority filing window to be announced by the Media Bureau by public notice.

(B) The licensee of any broadcast television station that the Commission makes all reasonable efforts to preserve pursuant to section 6403(b)(2) of the Spectrum Act that is predicted to experience aggregate new interference to population served in excess of one percent as a result of the repacking process will be afforded an opportunity to submit an application for a construction permit pursuant to paragraph (b)(2)(i) or (ii) of this section in the priority filing window required by paragraph (b)(1)(iv)(A).

* * * * *

(2) * * *

(i) *Alternate channels.* The licensee of a reassigned station, a UHF-to-VHF station, a High-VHF-to-Low-VHF station, or a broadcast television station described in paragraph (b)(1)(iv)(B) of this section will be permitted to file a major change application for a construction permit for an alternate channel on FCC Form 301, 301–CA, or 340 during a filing window to be announced by the Media Bureau by public notice, provided that:

* * * * *

(ii) *Expanded facilities.* The licensee of a reassigned station, a UHF-to-VHF station, a High-VHF-to-Low-VHF station, or a broadcast television station described in paragraph (b)(1)(iv)(B) of this section will be permitted to file a minor change application for a construction permit on FCC Form 301, 301–CA, or 340 during a filing window to be announced by the Media Bureau by public notice, in order to request a change in the technical parameters specified in the Channel Reassignment Public Notice (or, in the case of a broadcast television station described in paragraph (b)(1)(iv)(B) that is not reassigned to a new channel, a change in its authorized technical parameters) with respect to height above average terrain (HAAT), effective radiated power (ERP), or transmitter location that would be considered a minor change under §§ 73.3572(a)(1),(2) or 74.787(b) of this chapter.

* * * * *

[FR Doc. 2014–29687 Filed 12–22–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 130904784–4999–02]

RIN 0648–BD67

Fisheries Off West Coast States; List of Authorized Fisheries and Gear

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

ACTION: Final rule.

SUMMARY: This action updates the Federal list of authorized fisheries and gear issued under section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act (''List of Fisheries''). The List of Fisheries includes a description of fisheries that operate in the U.S. West Coast Exclusive Economic Zone (EEZ), the Pacific Fishery Management Council's (Council's) geographic area of authority. This action is necessary because the current list is outdated and either includes several fisheries that no longer occur, or does not include fisheries that do occur, within the U.S. West Coast EEZ. This rule would bring the list up to date with current West Coast fisheries and fishery management plans (FMPs).

DATES: Effective January 22, 2015.

ADDRESSES: Additional requests for information regarding this action may be obtained by contacting the Sustainable Fisheries Division, NMFS West Coast Region, 7600 Sand Point Way NE., Seattle, WA 98115. This final rule also is accessible via the Internet at the Federal eRulemaking portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206–526–6129, (fax) 206–526–6736, *Yvonne.deReynier@noaa.gov;* Joshua Lindsay, 562–980–4034, 562–980–4047, *Joshua.Lindsay@noaa.gov.*

SUPPLEMENTARY INFORMATION: Section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that the Secretary of Commerce maintain a list of all fisheries operating in the U.S. EEZ and all fishing

gear used in such fisheries (16 U.S.C. 1855(a)). This section of the MSA further prohibits any person or vessel from employing fishing gear or engaging in a fishery not included on the List of Fisheries ''without giving 90 days advance written notice to the appropriate Council.'' Fishery management councils are authorized to submit changes to the list to the Secretary of Commerce as each council deems appropriate, after which the Secretary must publish a revised list after providing notice of the changes to the public and after providing an opportunity for public comment on those changes (16 U.S.C. 1855(a)(4)). On August 7, 2014 (79 FR 46214), NMFS published a proposed rule to update 50 CFR 600.725(v), Section VI, the section of the List of Fisheries that applies to fisheries occurring within the U.S. West Coast EEZ. The Council recommended revising and updating the List of Fisheries at its September 2013 meeting, after reviewing all of the fisheries occurring within the West Coast EEZ and after taking comments from West Coast states, tribes and members of the public. Through this final rule, NMFS implements the Council's recommended revisions to the List of Fisheries, with no changes or edits. The regulatory text published in the proposed rule for this action has not been changed for this final rule.

Comments and Responses

In the proposed rule, NMFS solicited public comment through September 8, 2014. During the comment period, NMFS received two letters of comment. One letter of comment, received from a member of the public, requested that the Council update the northern anchovy stock assessment. The proposed rule to update the List of Fisheries does not address the northern anchovy stock assessment; therefore, that letter is not relevant to this action.

Comment: NMFS received a letter from an environmental non-government entity providing qualified support for the rule, but expressing concern that with the proposed revisions, the List of Fisheries is still not narrow enough to ensure that the Council will be notified if anyone attempts to develop a new fishery on currently unfished squid species (Line 10 of Section VI at 50 CFR 600.725(v)) or on those finfish and invertebrate not explicitly listed in Lines 1–18 of Section VI (See Line 19 of Section VI at 50 CFR 600.725(v)). This commenter also suggested that the Council review and update the List of Fisheries on a regular basis, as part of its reviews of its Fishery Ecosystem Plan.

Response: The Council's recommended revisions to the List of Fisheries, published in the proposed rule and implemented in this final rule, update the previously broad and outdated List of Fisheries. NMFS disagrees with the commenter's assertion that the revised List of Fisheries is overly broad at Lines 10 and 19. Line 10, which addresses squid species other than market squid (*Doryteuthis opalescens*) and octopus, is intended to include all existing fisheries for those species groups. There are some West Coast cephalopod harvests other than in the market squid fishery, particularly in those years that populations of certain squid species (*e.g. Dosidicus gigas,* Humboldt squid) appear in the EEZ in unpredictably significant quantities. Without Line 10 of Section VI at 50 CFR 600.725(v), the List of Fisheries could exclude existing cephalopod fisheries, which would be contrary to the purpose of the List of Fisheries to include existing fisheries.

Line 19 of Section VI at 50 CFR 600.725(v) covers all finfish and invertebrate fisheries not listed in the rest of the table at Section VI and not otherwise prohibited. Line 19 is to be read in the context of the rest of Section VI of the List of Fisheries, which details all of the major federal and state fisheries that occur within the West Coast EEZ. To prepare this rulemaking, the Council, NMFS, and West Coast states and tribes, carefully reviewed recent and historic commercial landings data from the Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN), as well as Federal and state recreational fisheries gear requirements and data. As explained in the preamble to the proposed rule for this action, the Council's intent in developing its revisions to the List of Fisheries was to define existing fisheries in as narrow terms as possible, but the Council did not intend to eliminate any existing fisheries, including fisheries that might only occur during years when West Coast climate conditions were conducive to certain species occurring in greater than usual amounts. Lines 1 through 18 of the table at Section VI provide a significantly detailed list of West Coast existing commercial and recreational fisheries. Line 19 ensures that existing small or intermittent commercial and recreational fisheries are not unintentionally thwarted by failure to include them on the List of Fisheries.

The MSA does not intend the List of Fisheries as a tool to prohibit fishing, but rather as a tool to ensure that the Council is formally notified by fisheries participants intending to begin new fisheries. The Council is in the process of developing a comprehensive, multi-FMP amendment to prohibit the development of commercial fisheries for a broad group of currently unfished forage fish species, including those squid species mentioned by the commenter. Should anyone begin targeting and landing currently unfished forage species between now and the completion of the comprehensive FMP amendment, the West Coast state, tribal, and federal agencies and the Council will be notified via PacFIN landings data.

NMFS appreciates the commenter's suggestion that Section VI of the List of Fisheries be reviewed and updated on a regular basis and as a part of the Council's FEP review process. The Council is next scheduled to begin reviewing and updating the FEP in 2018 and NMFS will both pass that suggestion on to the Council and will preserve the commenter's suggestion in the agency's planning file for that review process.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the four U.S. West Coast FMPs, other provisions of the MSA, and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. NMFS is not aware of any Treaty Indian tribe or subsistence fisheries in the EEZ other than those listed in § 600.725(v). This action does not supersede or otherwise affect exemptions that exist for Treaty Indian fisheries.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing vessels, Marine resources.

Dated: December 16, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

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

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, in paragraph (v), Section VI of the table is revised to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * * * *	
VI. Pacific Fishery Management Council	
1. Pacific Coast Salmon Fisheries (FMP):	
A. Commercial	A. Hook and line.
B. Recreational	B. Hook and line.
2. Pacific Coast Groundfish Fisheries (FMP):	
A. Commercial	A. Trawl, hook and line, pot/trap, demersal seine, set net, spear, and hand collection.
B. Recreational	B. Hook and line, spear.
3. Coastal Pelagic Species Fisheries (FMP):	
A. Commercial	A. Purse seine, lampara net, brail net, dip net, cast net, hook and line.
B. Recreational	B. Hook and line, spear, pot/trap, dip net, cast net, hand harvest, rake, harpoon, bow and arrow.
4. Highly Migratory Species Fisheries (FMP):	
A. Commercial	A. Hook and line, gillnet, harpoon, purse seine.
B. Recreational	B. Hook and line, spear, harpoon, bow and arrow.
5. Pacific Halibut Fisheries (Non-FMP):	
A. Commercial	A. Hook and line.
B. Recreational	B. Hook and line, spear.
6. Dungeness Crab Fisheries (Non-FMP):	
A. Commercial	A. Pot/trap.
B. Recreational North of 46°15′ N. lat	B. Pot/trap, dip net, hand harvest.
C. Recreational South of 46°15′ N. lat. and North of 42° N. lat	C. Pot/trap, hook and line, dip net, hand harvest, rake, crab loop.
D. Recreational South of 42° N. lat	D. Pot/trap, hand harvest, hoop net, crab loop.
7. Crab Fisheries for Species other than Dungeness crab (Non-FMP):	
A. Commercial Pot/Trap Fisheries South of 46°15′ N. lat	A. Pot/trap.
B. Recreational North of 46°15′ N. lat	B. Pot/trap, dip net, hand harvest.
C. Recreational South of 46°15′ N. lat. and North of 42° N. lat	C. Pot/trap, hook and line, dip net, hand harvest, rake, crab loop.
D. Recreational South of 42° N. lat	D. Pot/trap, hand harvest, hoop net, crab loop.
8. Shrimp and Prawn Fisheries (Non-FMP):	
A. Commercial spot prawn	A. Pot/trap.
B. Commercial pink shrimp North of 46°15′ N. lat	B. Trawl.
C. Commercial pink shrimp South of 46°15′ N. lat	C. Pot/trap, trawl.
D. Commercial coonstripe shrimp South of 46°15′ N. lat	D. Pot/trap.
E. Commercial ridgeback prawn South of 42° N. lat	E. Trawl.
F. Recreational North of 46°15′ N. lat	F. Pot/trap, dip net, hand harvest.
G. Recreational South of 46°15′ N. lat. and North of 42° N. lat	G. Pot/trap, hook and line, dip net, hand harvest, rake.
H. Recreational South of 42° N. lat	H. Pot/trap, hand harvest, dip net.
9. Hagfish Commercial Fisheries (Non-FMP)	Pot/trap.
10. Squid, all spp. except market squid or not otherwise prohibited, and Octopus Fisheries (Non-FMP):	
A. Commercial	A. Hook and line, pot/trap, dip net, seine, trawl, set net, spear, hand harvest.
B. Recreational Squid North of 42° N. lat	B. Hook and line, cast net, dip net, hand harvest.
C. Recreational Octopus North of 42° N. lat	C. Hook and line, pot/trap, dip net, hand harvest.
D. Recreational South of 42° N. lat	D. Hook and line, dip net, hand harvest.
11. White Sturgeon Fisheries (Non-FMP):	
A. Commercial South of 46°15′ N. lat. and North of 42° N. lat	A. Trawl, pot/trap, hook and line, seine, dip net, spear.
B. Recreational North of 42° N. lat	B. Hook and line.
C. Recreational South of 42° N. lat	C. Hook and line, spear.
12. Sea Cucumber Fishery (Non-FMP):	
A. Commercial hand harvest fishery South of 46°15′ N. lat	A. Hand harvest.
B. Commercial trawl South of 42° N. lat	B. Trawl.
13. Minor Finfish Commercial Fisheries South of 46°15′ N. lat. and North of 42° N. lat. for: Salmon shark, Pacific pomfret, slender sole, wolf-eel, eelpout species, Pacific sandfish, skilfish, and walleye pollock Fisheries (Non-FMP).	Trawl, pot/trap, hook and line, seine, dipnet, spear.
14. Weathervane Scallop Commercial Fishery South of 46°15′ N. lat. and North of 42° N. lat. (Non-FMP).	Trawl.

Fishery	Authorized gear types
15. California Halibut, White Seabass Commercial Fisheries South of 42° N. lat. (Non-FMP):	
A. California halibut trawl	A. Trawl.
B. California halibut and white seabass set net	B. Gillnet, trammel net.
C. California halibut hook and line	C. Hook and line.
D. White seabass hook and line	D. Hook and line.
16. California Barracuda, White Seabass, and Yellowtail Drift-Net Commercial Fishery South of 42° N. lat. (Non-FMP).	Gillnet.
17. Pacific Bonito Commercial Net Fishery South of 42° N. lat. (Non-FMP)	Purse seine.
18. Lobster Commercial Pot and Trap Fishery South of 42° N. lat. (Non-FMP)	Pot/trap.
19. Finfish and Invertebrate Fisheries Not Listed Above and Not Otherwise Prohibited (Non-FMP):	
A. Commercial South of 46°15′ N. lat	A. Hook and line, pot/trap, spear.
B. Recreational	B. Hook and line, spear, pot/trap, dip net, cast net, hand harvest, rake, harpoon, bow and arrow.

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[FR Doc. 2014–30014 Filed 12–22–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121009528–2729–02]

RIN 0648–XD656

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of Maine is transferring a portion of its 2014 commercial summer flounder quota to the State of Connecticut. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

DATES: Effective December 18, 2014, through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, 978–281–9112.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.102.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

Maine has agreed to transfer 4,900 lb (2,222.6 kg) of its 2014 commercial quota to Connecticut. The quota transfer from Maine to Connecticut was prompted by the diligent efforts of state officials in Connecticut not to exceed the commercial summer flounder quota. This quota transfer is conditioned. In the event that landings of summer flounder occur in Maine during the remaining months of 2014 resulting in an overage of Maine's summer flounder commercial quota as a result of this transfer, Connecticut has agreed to transfer 2015 summer flounder quota to Maine sufficient to cover the overage. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder commercial quotas for calendar year 2014 are: Maine, 98 lb (44.45 kg); and Connecticut, 242,106 lb (109,817.4 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 18, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–30032 Filed 12–18–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130925836–4174–02]

RIN 0648–XD654

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 50 feet (15.2 meters (m)) length overall (LOA) using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2014 Pacific cod total allowable catch apportioned to catcher vessels less than 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), December 18, 2014, through 2400 hours, A.l.t., December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2014 Pacific cod total allowable catch (TAC) apportioned to catcher vessels less than 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA is 5,699 metric tons (mt), as established by the final 2014 and 2015 harvest specifications for groundfish of the GOA (79 FR 12890, March 6, 2014).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2014 Pacific cod TAC apportioned to catcher vessels less than 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,689 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for catcher vessels less than 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 16, 2014.

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

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

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

Dated: December 17, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–29973 Filed 12–18–14; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 246
Tuesday, December 23, 2014

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

Foreign Agricultural Service

7 CFR Part 6

RIN 0551–AA82

Dairy Tariff-Rate Import Quota Licensing Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulation that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. The three most significant changes to the rule would be to suspend for an additional seven years, the historical license reduction provision, which currently expires with the beginning of quota year 2016; to modify procedures for collecting licensing fees in order to better align the fee collection to the costs of administering the program; and to exclusively use electronic communications in the application, reporting and payment processes. The expected outcome from the implementation of the proposed changes would be to allow license holders to adjust to changing market conditions impacting the dairy sector; increase the Department's ability to more closely align cost recovery with the actual costs of administering the program; and allow the Department to reduce lag times, minimize paper files, and increase the efficiency of the program operations.

DATES: Submit comments on this proposed rule on or before February 23, 2015.

ADDRESSES: Comments should include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail, hand delivery, or courier: Abdelsalam El-Farra, Agricultural Marketing Specialist, Sugar and Dairy Branch, Import Programs and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 5526, 1400 Independence Avenue SW., Washington, DC 20250–1021, (202) 720–9439; fax (202) 720–0876; *dairy_ils@fas.usda.gov.*

Comments will be available for inspection online at *www.regulations.gov* and at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Abdelsalam El-Farra, Agricultural Marketing Specialist, Sugar and Dairy Branch, Import Programs and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, (202) 720–9439; fax (202) 720–0876; *dairy_ils@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The proposed rule has been determined to be not significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on small businesses participating in the program.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would not have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The proposed rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this proposed rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Unfunded Mandates Reform Act (Pub. L. 104–4)

Public Law 104–4 requires consultation with state and local officials and Indian tribal governments. This proposed rule does not impose an unfunded mandate or any other requirement on state, local, or tribal governments. Accordingly, these programs are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Executive Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule does not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Government Paperwork Elimination Act

The United States Department of Agriculture (USDA) is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing regulation codified at 7 CFR 6.20 through 6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in certain notes in Chapter 4 of the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person, as defined in the regulation, to whom

such licenses have been issued and only in accordance with the terms and conditions of the regulation. Licenses are issued on a calendar year basis, and each license authorizes the licensee to import a specified quantity and type of dairy article from a specified country of origin.

Under TRQs, a low tariff rate, commonly referred to as the in-quota rate, applies to imports up to a specified quantity. A higher tariff rate, commonly referred to as the over-quota rate, applies to any imports in excess of that amount. No license is required to import products at the over-quota tariff rate.

USDA issues three types of licenses: Historical, nonhistorical (lottery), and designated. For all three license types, the current regulation provides that persons must apply each year between September 1 and October 15. Historical and designated licensees may apply for lottery licenses, subject to certain limitations, if they are affiliated or associated with another company holding a license for that same item from the same country of origin. Licensees may fail to qualify for a license for a specific item from a specific country in the following year, if they do not meet certain requirements. Licensees must (i) apply for the license each year, (ii) pay an annual fee, and (iii) have imported at least 85 percent of the final license amount from the previous year. To avoid ineligibility due to the 85 percent rule, licensees may surrender up to 100 percent of the license, but must import 85 percent of any quantity not surrendered. Section 6.25(b)(1)(i) of the regulation currently provides that beginning with the 2016 quota year, any historical licensee who surrenders more than 50 percent of the license amount for the same item from the same country during at least three of the most recent five years will be issued a license thereafter in an amount equal to the average amount imported under that license for those five quota years.

This proposed rule would provide historical license holders additional time to adjust to changing market conditions by suspending the § 6.25(b)(1)(i) provision through the end of quota year 2022. The proposed rule would provide that reporting, payment, and application for licenses be made only by electronic submission in order to reduce the use of paper and streamline operations. Additionally, the rule proposes to modify procedures for collecting licensing fees in order to better align the fee collection with the costs of administering the program.

The current regulations allow applicants to apply for a license, generating administrative costs for the USDA, and then choose not to pay for the license, thus resulting in non-recovered administrative expenses. The proposed rule would impose financial consequences for such non-payment, which should increase USDA's ability to recover program expenses.

The proposed rule does not make any modifications to the appendices to this subpart.

Discussion of Comments

On February 6, 2013, USDA published in the **Federal Register** (78 FR 8434) an advanced notice of proposed rulemaking (ANPR) soliciting comment on all aspects of the current dairy import licensing rule. Specifically, USDA invited comment on the following questions: (1) Does the historical and nonhistorical license system still serve a purpose? (2) Should any provisions of the current regulation be modified in light of significant advances in technology and telecommunications? (3) Should methods be developed for issuing licenses that would increase competition among importers? (4) Should licenses be auctioned or issued on another basis? (5) Should § 6.25(b)(1)(i) regarding historical license reductions be eliminated, revised, or indefinitely suspended? (6) Should the basis upon which license fees are assessed be changed from the current flat-fee per license? (7) Should the deadlines for the surrender and reallocation of licenses in § 6.26 be changed to allow earlier reallocations? USDA received comments from 46 respondents, all of whom hold licenses and receive an economic benefit from the program or represent license holders who benefit from the program. The 46 respondents consisted of: 33 private importers; 7 associations; 3 foreign governments; and 3 other private concerns with vested interests in the outcome of the regulation review.

Many of the comments were general in nature, focusing on the following three themes: Support for the current program, administrative management of the program, and the allocation of licenses. Below is a summary of their comments by respondents who addressed the seven specific questions posed in the ANPR including the relevant section number in the current rule where applicable.

Does the historical and nonhistorical license system still serve a purpose? (§§ 6.20 through 6.23)

Of the 39 respondents who commented on this issue, 32 supported continuation of a license system. Respondents claimed that the system supports the importer's ability to develop distribution networks; ensures adequate food safety; allows the license holder to foster investment in distribution systems, brand identity and marketing; and supports consumer choice, competition and the development of domestic artisan products. Seven respondents commented that the system no longer served any purpose, stating that the system increases the difficulty of obtaining licenses by new entrants; supports a growing concentration of historical license in fewer hands; and adds additional costs and burdens; and acts as an impediment to free trade. One respondent proposed abolishing the license systems. A quota-holding foreign government proposed revisions such as: Combining all three licenses types; allowing the exporting nation to manage its quotas; implementing a first-come-first-serve system for eligible importers; phasing out the category of nonhistorical licenses in favor of designated licenses; and combining historical and designated licenses into a single category.

Upon consideration of all comments supporting and opposing the current licensing system, no changes to the fundamental structure of the licensing system are proposed at this time.

Should any provisions of the current regulation be modified in light of significant advances in technology and telecommunications? (§§ 6.24 through 6.26; §§ 6.32 through 6.34)

Of the 21 respondents who commented on this issue, 16 favored technological improvements that would allow the streamlining of the application process and improved administrative processes that would allow an earlier reallocation. Five respondents opposed to modifying the current regulation cite the success of the current program as it is.

The Department recognizes the desire for a more technologically advanced and streamlined reporting system for administering licenses, reallocations, surrenders, applications, reporting and payment of fees. The Department is currently working to implement the February 19, 2014 Executive Order—Streamlining the Export/Import Process for America's Businesses—calling for the completion of the International Trade Data System (ITDS) by December 2016. The USDA, Foreign Agricultural Service, is mandated to be a Participating Government Agency (PGA) of the Automated Commercial Exchange (ACE) project of the International Trade Data System. Over the next two years, the Department will be required to re-

program and update the dairy import licensing computer systems, in order to comply with the Federal Government's Single Window Initiative for all trade agencies. The Department will be making fundamental changes to the computer systems, which will take several years to accomplish. Without these structural changes to the underlying computer systems, required as part of the ITDS project, USDA would not be able to implement most of the other changes proposed in the comments, such as changing the dates by which fees are due or by which reallocation of licenses may be issued. At an appropriate time and once the computer systems have been moved to the ACE platform, the Department will again request comments for additional improvements and changes to the program.

The Department proposes moving to strictly electronic communications in the application, reporting and payment processes to streamline operations, reduce the need for paper and to increase the efficiency of the program. The proposed change toward greater electronic submissions in the application, allocation, reporting and payment process will allow USDA to reduce lag-times, minimize paper files, streamline operations and increase the efficiency of the program operations.

Should methods be developed for issuing licenses that would increase competition among importers? (§ 6.25)

Of the 21 respondents who commented on this issue, 15 opposed increasing competition among importers, citing that the most significant competition comes from other premium cheeses and that increasing competition among importers would weaken the system and reduce the incentive to invest in the necessary marketing, distribution network, and food safety. The six respondents favoring increased competition were divided in their approach. One proposed to eliminate the licensing system altogether; another proposed implementing a first-come-first-served system; and one proposed to combine categories, giving greater influence over the quotas to the foreign countries.

At this time, the Department does not propose any changes that directly alter the level of competition among importers.

Should licenses be auctioned or issued on another basis? (§ 6.25)

Of the 33 respondents who commented on this issue, none supported auctioning licenses. The two associations and foreign government that responded to this question commented that auctioning licenses would lead to a decrease in the fill rates. The Department does not propose any change to the existing basis for issuing licenses.

Should § 6.25(b)(1)(i), regarding the historical license reduction provision, be eliminated, revised, or indefinitely suspended? (§ 6.25)

Of the 39 respondents who commented on this issue, 37 were licenses holders or associations who supported the elimination of § 6.25(b)(1)(i). A common theme of these comments was that market forces outside their control have prevented them from importing the volumes required to prevent license reductions, and they believe they should not be penalized for market forces beyond their control. Thirty-three respondents stated that § 6.25(b)(1)(i) threatens their business of importing specialty cheeses. One respondent supported changing the basis for this provision to 50 percent of the overall TRQ fill rate; in other words, if a licensee's fill rate was above the industry average fill rate, no license reduction would occur.

The Department previously suspended § 6.25(b) three times: In 1999 for five years, in 2008 for two years, and in 2010 for five more years. The association representing historical licensees argues that the use of the term ''suspend'' is not appropriate. They argue that once the suspension period is over and the provision comes back into force, the previous five years are used as a basis for calculating historical license amounts, *i.e.,* tracking is not suspended. Nonetheless the Department will continue to use the term ''suspension,'' because even though tracking occurs, the license reductions themselves are suspended.

The two respondents commenting in favor of maintaining § 6.25(b)(1)(i) cite the benefits of moving TRQ amounts from the historical to the lottery category, where it is available to other applicants. They stated that historical licenses have become increasingly concentrated in fewer companies, and claim that it is increasingly difficult for new companies to enter the dairy importing business due to the difficulty of obtaining licenses. One respondent questioned why only certain importers should have access to historical licenses while others are effectively barred from holding such licenses, many of which were issued in the 1950s.

Significant market changes have occurred in the U.S. and global dairy markets in the past five years. The United States has been transformed from being a net importer of dairy products to being a large net exporter. Many of the unfilled licenses are types of cheese for which demand has diminished or for which U.S. production has increased, leading to reduced import demand. There have been policy changes in major dairy exporting countries, in some cases reducing export supply. For the majority of dairy products subject to significant historical license reductions in recent years, if they had been in force, a transfer of the license from the historical to the lottery category would not have resulted in an increased TRQ fill rate.

Nonetheless, the basic concept of the historical license reduction provision—that some mechanism be in place to provide for at least the potential movement of license from the historical to the lottery category—serves a public purpose. Therefore, the Department believes that this provision needs to be retained. However, to allow more time for adjustments to these new market conditions, the Department proposes suspending the § 6.25(b)(1)(i) provision for an additional seven years, through the 2022 quota year, and the provision would come back into effect for 2023.

Should the basis upon which license fees are assessed be changed from the current flat-fee per license?

Of the 15 respondents who commented on this issue, eight commented that the current flat fee system is adequate, simple, and straightforward, while seven respondents supported a change. Those supporting a change cited an issue of equity, preferring to charge a fee based on the size of the licenses.

The basis for the fee is to recover the costs of administering the dairy licensing program. The cost of administering each license is the same, whether the license quantity is small or large. Therefore, the Department will retain keeping the same fee for each license. Under the current regulation, eligible parties can request and be awarded a license and then decide not to pay for it, thus forfeiting the license. The administrative costs are incurred during the application, eligibility determination, and allocation process, as well as in administering the license after it is issued. Therefore, the Department proposes to require payment of the fee for each license requested and awarded, instead of the current system where the fee can be avoided if the license is returned. To ensure compliance with this provision, an applicant who fails to pay all fees for all licenses requested and awarded will forfeit all licenses.

Should the deadlines for the surrender and reallocation of licenses in section 6.26 be changed to allow earlier reallocations?

Of the 21 respondents who commented on this issue, 19 supported an early as possible surrender and reallocation date, citing that more time is needed to make the commercial arrangements necessary to utilize the reallocated quantities. The other two respondents found the current timeline adequate.

The Department seriously considered many options for changing the dates for surrender and reallocation, but given the interaction of the surrender and reallocation process with other timelines, such as for fee payments, it is not feasible to accommodate an earlier surrender and reallocation period within the current reporting system. The Department will make no modification to deadlines for the surrender and allocation process.

Summary of Proposed Changes to Rule

The following is a summary of the proposed substantive changes to the current regulation:

The name of the program has been corrected throughout the document to read ''Dairy Tariff-Rate Quota Import Licensing.''

References to the process used for the initial allocation of licenses, which took place based on the 1997 quota year, have been removed throughout this proposed rule due to the fact that current allocations are now based on the preceding quota year. References to the 1997 quota year allocations are removed from the following sections: §§ 6.20(b), 6.23(b)(2), 6.23(b)(3), 6.23(b)(4), 6.23(b)(5), 6.25(a)(1), 6.25(a)(2), 6.25(a)(3), and 6.26(f).

Section 6.21 Definitions has been updated to include several modifications. The definition of ''Article other than cheese or cheese products'' now specifies that the article is a dairy product. The definition of ''EC'' no longer lists the current members, because new members may be added at any time. Therefore, the definition of ''EC'' is defined to be those countries listed in Additional U.S. Note 2 to Chapter 4 of the Harmonized Tariff Schedule, because this is published annually and maintained current. ''Customs'' has been replaced throughout the proposed rule with ''CBP'' which stands for Customs and Border Protection. The definition of ''Licensing Authority'' removes reference to a specific USDA division. The definition of ''Other Countries'' deletes the reference to the Harmonized Tariff Schedule. The definition of ''Postmark'' is deleted from this section, given that physical mail will no longer be accepted. This proposed rule would require that all communications, applications, reporting and payment will be made electronically as designated by the Licensing Authority. Therefore, references to physical mail, postmarks, mailing addresses, or physical locations have been deleted throughout the rule. The references to physical mail delivery that have been deleted are found in the following sections: §§ 6.24(a), 6.24(b)(1), 6.24(c), 6.25(d)(1), 6.26(a), 6.26(c), 6.28(b), 6.33(b), 6.33(c), 6.35(b), and 6.36(b). Additionally, a valid email address is now being required for eligibility. The requirement for an email address has been added to § 6.23(a)(3).

Section 6.22(b) was deleted from the rule because these references to General Note 15 provisions of the HTS are not covered, nor in any way affected, by the dairy import licensing program.

Section 6.24(c) was deleted because it primarily applied to mailed hardcopy applications. The information submitted through the current electronic application system obviates the need for submitting this additional information.

Section 6.25(a)(1) through (3) was deleted because the historic allocation process is no longer relevant. New quota year allocations are made based on the preceding year's allocations and usage.

Section 6.25(b)(1)(i) extends the date of the suspension of the historical licenses reduction provision for an additional seven years, expiring with the beginning of quota year 2023.

Section 6.25(d)(1)(ii) requires, for Appendix 3 allocations, that countries designate the allocations of specific articles to importers in kilograms. This requirement will reduce any disputes arising from converting percentages into weights.

Section 6.26(c) was rewritten to clarify the surrender and allocation process for persons who were issued an import license for a cheese or cheese product article versus a person who was issued an import license for an article other than cheese or cheese products.

Section 6.28(b) requires that all license holders who intend to convey their business and are requesting USDA to transfer a license, submit the required documentation by email. The option to send documents via physical mail or courier is no longer available.

Section 6.33(b) tightens the timeline for making payments and requires payment in full within 10 days from the date of the issuance of the license, rather than the current 30 day period. This change would allow USDA to accelerate some of its administrative functions of operating the licensing program because the use of electronic payment does not require the longer lag time necessary for processing paper checks.

Section 6.33(c) requires that an applicant who applies for and is issued a license pay for all licenses issued, or a hold will be placed on all licenses of such applicant. If after receiving a warning letter via email from the Licensing Authority, the applicant does not pay in full within 10 days for all licenses issued, then all licenses issued to the licensee, paid or unpaid, will be revoked.

Section 6.33(d) is deleted pursuant to the previous clause (§ 6.33(c)) and no longer permits licensees not to accept or pay for certain licenses issued to them. The cost of administering the licensing program is incurred by USDA during the application and allocation process; therefore, applicants will be required to pay for licenses issued in accordance with § 6.33(c) or have all licenses revoked.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Dairy, Cheese, Imports, Procedural rules, Application requirements, Tariff-rate Quota, Reporting and recordkeeping requirements.

Accordingly, for reasons described in the preamble, 7 CFR part 6 is proposed to be amended as follows:

PART 6—IMPORT QUOTAS AND FEES

Subpart—Dairy Tariff-Rate Quota Import Licensing

■ 1. The authority citation for Subpart—Dairy Tariff-Rate Quota Import Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

■ 2. The heading for ''Subpart—Dairy Tariff-Rate Import Quota Licensing'' is revised to read as set forth above.

■ 3. Sections 6.20 through 6.36 are revised to read as follows:

* * * * *

6.20 Introduction.
6.21 Definitions.
6.22 Requirement for a license.
6.23 Eligibility to apply for a license.
6.24 Application for a license.
6.25 Allocation of licenses.
6.26 Surrender and reallocation.
6.27 Limitations on use of license.
6.28 Transfer of license.

6.29 Use of licenses.
6.30 Record maintenance and inspection.
6.31 Debarment and suspension.
6.32 Globalization of licenses.
6.33 License fee.
6.34 Adjustment of appendices.
6.35 Correction of errors.
6.36 Miscellaneous.

* * * * *

§ 6.20 Introduction.

(a) Presidential Proclamation 6763 of December 23, 1994, modified the Harmonized Tariff Schedule of the United States affecting the import regime for certain articles of dairy products. The Proclamation terminated quantitative restrictions that had been imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624); proclaimed tariff-rate quotas for such articles pursuant to Pub. L. 103–465; and specified which of such articles may be entered only by or for the account of a person to whom a license has been issued by the Secretary of Agriculture.

(b) Effective January 1, 1995, the prior regime of absolute quotas for certain dairy products was replaced by a system of tariff-rate quotas. The articles subject to licensing under the tariff-rate quotas are listed in Appendices 1, 2, and 3 of this subpart. Licenses permit the holder to import specified quantities of the subject articles into the United States at the applicable in-quota rate of duty. If an importer has no license for an article subject to licensing, such importer will, with certain exceptions, be required to pay the applicable over-quota rate of duty.

(c) The Secretary of Agriculture has determined that this subpart will, to the fullest extent practicable, result in fair and equitable allocation of the right to import articles subject to such tariff-rate quotas. The subpart will also maximize utilization of the tariff-rate quotas for such articles, taking due account of any special factors which may have affected or may be affecting the trade in the articles concerned.

§ 6.21 Definitions.

As used in this subpart and the appendices thereto, the following terms are defined as follows:

Article. One of the products listed in Appendices 1, 2, or 3, which are the same as those described in Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 of the Harmonized Tariff Schedule.

Article other than cheese or cheese products. Any article that is a dairy product, but not a cheese or cheese product.

CBP. United States Customs and Border Protection, U.S. Department of Homeland Security.

Cheese or cheese products. Articles in headings 0406, 1901.90.34, and 1901.90.36 of the Harmonized Tariff Schedule.

Commercial entry. Any entry except those made by or for the account of the United States Government or for a foreign government, for the personal use of the importer or for sampling, taking orders, research, or the testing of equipment.

Country. Country of origin as determined in accordance with CBP rules and regulations, except that ''EC'', and ''Other countries'' shall each be treated as a country.

Dairy products. Articles in headings 0401 through 0406, margarine cheese listed under headings 1901.90.34 and 1901.90.36, ice cream listed under heading 2105, and casein listed under heading 3501 of the Harmonized Tariff Schedule.

Department. The United States Department of Agriculture.

EC. Those countries listed in Additional U.S. Note 2 to Chapter 4 of the Harmonized Tariff Schedule.

Enter or Entry. To make or making entry for consumption, or withdrawal from warehouse for consumption in accordance with CBP regulations and procedures.

Harmonized Tariff Schedule or HTS. The Harmonized Tariff Schedule of the United States.

Licensee. A person to whom a license has been issued under this subpart.

Licensing Authority. Any officer or employee of the U.S. Department of Agriculture designated to act in this position by the Director of the Division charged with managing the Dairy Tariff-Rate Quota Import Licensing System.

Other countries. Countries not listed by name as having separate tariff-rate quota allocations for an article.

Person. An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

Process or processing. Any additional preparation of a dairy product, such as melting, grating, shredding, cutting and wrapping, or blending with any additional ingredient.

Quota year. The 12-month period beginning on January 1 of a given year.

Tariff-rate quota amount or TRQ amount. The amount of an article subject to the applicable in-quota rate of duty established under a tariff-rate quota.

United States. The customs territory of the United States, which is limited to the 50 states, the District of Columbia, and Puerto Rico.

§ 6.22 Requirement for a license.

A person who seeks to enter, or cause to be entered an article as a commercial entry, shall obtain a license, in accordance with this subpart.

§ 6.23 Eligibility to apply for a license.

(a) *In general.* To apply for any license, a person shall have:

(1) A business office, and be doing business, in the United States, and

(2) An agent in the United States for service of process, and

(3) An email address to be used for correspondence regarding licensing activities and reports.

The licensee shall at all times maintain a valid email address with the Licensing Authority.

(b) *Eligibility for 2014 and subsequent quota years.* (1) Historical licenses (Appendix 1). A person issued a historical license for an article for the current quota year may apply for a historical license (Appendix 1) for the next quota year for the same article from the same country, if such person was, during the 12-month period ending August 31 prior to the quota year, either:

(i) Where the article is cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of cheese or cheese products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) The owner of and importer of record for at least eight separate commercial entries of cheese or cheese products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period; or

(C) The owner or operator of a plant listed in Section II or listed in Section I as a processor of cheese of the most current issue of ''Dairy Plants Surveyed and Approved for USDA Grading Service'' and had processed or packaged at least 450,000 kilograms of cheese or cheese products in its own plant in the United States; or

(ii) Where the article is not cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of dairy products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) The owner of and importer of record for at least eight separate commercial entries of dairy products, from at least eight separate shipments,

totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period;

(C) The owner or operator of a plant listed in the most current issue of ''Dairy Plants Surveyed and Approved for USDA Grading Service'' and had manufactured, processed or packaged at least 450,000 kilograms of dairy products in its own plant in the United States; or

(D) The exporter of dairy products in the quantities and number of shipments required under (A) or (B) above.

(2) Nonhistorical licenses for cheese or cheese products (Appendix 2). A person may annually apply for a nonhistorical license for cheese or cheese products (Appendix 2) if such person meets the requirements of paragraph (b)(1)(i) of this section.

(3) Nonhistorical licenses for articles other than cheese or cheese products (Appendix 2). A person may annually apply for a nonhistorical license for articles other than cheese or cheese products (Appendix 2) if such person meets the requirements of paragraph (b)(1)(ii) of this section.

(4) Designated license (Appendix 3). A designated license may be issued to a person who has applied for a license, has met the requirements of paragraph (b)(1)(i) of this section, and is designated by the government of a country for such license according to § 6.25(d).

(c) *Exceptions.* (1) A licensee that fails in a quota year to enter at least 85 percent of the amount of an article permitted under a license shall not be eligible to receive a license for the same article from the same country for the next quota year. For the purpose of this paragraph, the amount of an article permitted under the license will exclude any amounts surrendered pursuant to § 6.26(a), but will include any additional allocations received pursuant to § 6.26(b).

(2) Paragraph (c)(1) of this section will not apply where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the article, act of God or force majeure.

(3) Paragraph (c)(1) of this section may not apply in the case of historical or nonhistorical licenses, where the licensee demonstrates to the satisfaction of the Licensing Authority that the country specified on the license maintains or permits an export monopoly to control the dairy articles concerned and the licensee petitions the Licensing Authority to waive this requirement. The licensee shall submit evidence that the country maintains an export monopoly as defined in this paragraph. For the purposes of this paragraph ''export monopoly'' means a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article of dairy products from a country to the United States.

(4) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a non-historical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a historical butter license of 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed affiliated with another applicant if:

(i) The applicant is the spouse, brother, sister, parent, child or grandchild of such other applicant;

(ii) The applicant is the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant;

(iii) The applicant is owned or controlled by the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant.

(iv) Both applicants are 5 percent or more owned or directly or indirectly controlled, by the same person;

(v) The applicant, or a person who owns or controls the applicant, benefits from a trust that controls such other applicant.

(5) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a nonhistorical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a historical butter license for 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed associated with another applicant if:

(i) The applicant is an employee of, or is controlled by an employee of, such other applicant;

(ii) The applicant manages or is managed by such other applicant, or economically benefits, directly or indirectly, from the use of the license issued to such other applicant.

(6) The Licensing Authority will not issue a nonhistorical license for an article from a country during a quota year, for which the applicant receives a designated license.

§ 6.24 Application for a license.

(a) Application for license shall be made on electronic forms designated for the purpose by the Licensing Authority. All parts of the application shall be completed. The application shall be transmitted no earlier than September 1 and no later than midnight October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete applications.

(b)(1) Where the applicant seeks to establish eligibility on the basis of imports, applications shall include identification of entries sufficient to establish the applicant as the importer of record of entries required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(2) Where the applicant seeks to establish eligibility on the basis of exports, applications shall include:

(i) Census Form 7525 or a copy of the electronic submission of such form, and

(ii) The commercial invoice or bill of sale for the quantities and number of export shipments required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(c) An applicant requesting more than one nonhistorical license must rank order these requests by the applicable Additional U.S. Note number. Cheese and cheese products must be ranked separately from dairy articles other than cheese or cheese products.

§ 6.25 Allocation of licenses.

(a) *Licensing Authority.* The Licensing Authority will issue historical, nonhistorical and designated licenses.

(b) *Historical licenses for the 2014 and subsequent quota years (Appendix 1).* A person issued a historical license for the current quota year will be issued a historical license in the same amount for the same article from the same country for the next quota year except that beginning with the 2023 quota year, a person who has surrendered more than 50 percent of such historical license in at least three of the prior 5 quota years will thereafter be issued a license in an amount equal to the

average annual quantity entered during those 5 quota years.

(c) *Nonhistorical licenses (Appendix 2).* The Licensing Authority will allocate nonhistorical licenses on the basis of a rank-order lottery system, which will operate as follows:

(1) The minimum license size shall be:

(i) Where the article is cheese or cheese product:

(A) The total amount available for nonhistorical license where such amount is less than 9,500 kilograms;

(B) 9,500 kilograms where the total amount available for nonhistorical license is between 9,500 kilograms and 500,000 kilograms, inclusive;

(C) 19,000 kilograms where the total amount available for nonhistorical license is between 500,001 kilograms and 1,000,000 kilograms, inclusive;

(D) 38,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms; or

(E) An amount less than the minimum license size established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee;

(ii) Where the article is not cheese or cheese product:

(A) The total amount available for nonhistorical license where such amount is less than 19,000 kilograms;

(B) 19,000 kilograms where the total amount available for nonhistorical license is between 19,000 kilograms and 550,000 kilograms, inclusive;

(C) 38,000 kilograms where the total amount available for nonhistorical license is between 550,001 kilograms and 1,000,000 kilograms, inclusive; and

(D) 57,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms;

(E) An amount less than the minimum license sizes established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee.

(2) Taking into account the order of preference expressed by each applicant, as required by § 6.24(c), the Licensing Authority will allocate licenses for an article from a country by a series of random draws. A license of minimum size will be issued to each applicant in the order established by such draws until the total amount of such article in Appendix 2 has been allocated. An applicant that receives a license for an article will be removed from the pool for subsequent draws until every applicant has been allocated at least one license, provided that the licenses for which they applied are not already fully allocated. Any amount remaining after the random draws which is less than the applicable minimum license size may, at the discretion of the Licensing Authority, be prorated equally among the licenses awarded for that article.

(d) *Designated licenses (Appendix 3).* (1) With respect to an article listed in Appendix 3, the government of the applicable country may, not later than October 31 prior to the beginning of a quota year, submit directly by email to the Licensing Authority:

(i) The names, addresses and emails of the importers that it is designating to receive licenses; and

(ii) The amount, in kilograms, of such article for which each such importer is being designated. Where quantities for designation result from both Tokyo Round concessions and Uruguay Round concessions, the designations should be made in terms of each.

(2) To the extent practicable, the Licensing Authority will issue designated licenses to those importers, and in those amounts, indicated by the government of the applicable country, provided that the importer designated meets the eligibility requirements set forth in § 6.23. Consistent with the international obligations of the United States, the Licensing Authority may disregard a designation if the Licensing Authority determines that the person designated is not eligible for any of the reasons set forth in § 6.23(c)(1) or (2).

(3) If a government of a country which negotiated in the Uruguay Round for the right to designate importers has not done so, but determines to designate importers for the next quota year, it shall indicate its intention to do so directly and in writing to the Licensing Authority not later than July 1 prior to the beginning of such next quota year. Furthermore, if a government that has designated importers for a quota year determines that it will not continue to designate importers for the next quota year, it shall so indicate directly and in writing to the Licensing Authority, not later than July 1 prior to such next quota year.

§ 6.26 Surrender and reallocation.

(a) If a licensee determines that it will not enter the entire amount of an article permitted under its license, such licensee shall surrender its license right to enter the amount that it does not intend to enter. Surrender shall be made to the Licensing Authority no later than October 1. Any surrender shall be final and shall be only for that quota year, except as provided in § 6.25(b). The amount of the license not surrendered shall be subject to the license use requirements of § 6.23(c)(1).

(b) For each quota year, the Licensing Authority will, to the extent practicable, reallocate any amounts surrendered.

(c) Any person who qualified for or was issued a cheese or cheese product license for a quota year may apply to receive additional license, or addition to an existing license for a portion of the amount being reallocated. A person who did not qualify for a cheese or cheese product license for a quota year, but qualified only for a license for articles other than cheese or cheese products, may only apply to receive an additional license for articles other than cheese or cheese products, or addition to an existing license for articles other than cheese or cheese products for a portion of the amount being reallocated. The application shall be submitted to the Licensing Authority no earlier than September 1 and not later than September 15, and shall specify:

(1) The name and control number of the applicant;

(2) The article and country being requested, the applicable HTS Additional U.S. Note number and, if more than one article is requested, a rank-order by Additional U.S. Note number; and

(3) If applicable, the number of the license issued to the applicant for that quota year permitting entry of the same article from the same country.

(d) The Licensing Authority will reallocate surrendered amounts among applicants as follows:

(1) The minimum license size, or addition to an existing license, will be the total amount of the article from a country surrendered, or 10,000 kilograms, whichever is less;

(2) Minimum size licenses, or additions to an existing license, will be allocated among applicants requesting articles on the basis of the rank-order lottery system described in § 6.25(c);

(3) If there is any amount of an article from a country left after minimum size licenses have been issued, the Licensing Authority may allocate the remainder in any manner it determines equitable among applicants who have requested that article; and

(4) No amount will be reallocated to a licensee who has surrendered a portion of its license for the same article from the same country during that quota year unless all other licensees applying for a reallocated quantity have been allocated a license;

(e) However, if the government of an exporting country chooses to designate eligible importers for surrendered amounts under Appendix 3, the Licensing Authority shall issue the licenses in accordance with § 6.25(d)(2), provided that the government of the

exporting country notifies the Licensing Authority of its designations no later than September 1. Such notification shall contain the names and addresses of the importers that it is designating and the amount in percentage terms of such article for which each importer is being designated. In such case the requirements of paragraph (c) of this section shall not apply.

§ 6.27 Limitations on use of license.

(a) A licensee shall not obtain or use a license for speculation, brokering, or offering for sale, or permit any other person to use the license for profit.

(b) A licensee who is eligible as a manufacturer or processor, pursuant to § 6.23, shall process at least 75 percent of its licensed imports in such person's own facilities and maintain the records necessary to so substantiate.

§ 6.28 Transfer of license.

(a) If a licensee sells or conveys its business involving articles covered by this subpart to another person, including the complete transfer of the attendant assets, the Licensing Authority will transfer to such other person the historical, nonhistorical or designated license issued for that quota year. Such sale or conveyance must be unconditional, except that it may be in escrow with the sole condition for return of escrow being that the Licensing Authority determines that such sale does not meet the requirements of this paragraph.

(b) The parties seeking transfer of license shall give written notice to the Licensing Authority of the intended sale or conveyance described in paragraph (a) of this section by email. The notice must be received by the Licensing Authority at least 20 working days prior to the intended consummation of the sale or conveyance. Such written notice shall include copies of the documents of sale or conveyance. The Licensing Authority will review the documents for compliance with the requirements of paragraph (a) of this section and advise the parties in writing of its findings by the end of the 20-day period. The parties shall have the burden of demonstrating to the satisfaction of the Licensing Authority that the contemplated sale or conveyance complies with the requirements of paragraph (a) of this section. Within 15 days of the consummation of the sale or conveyance, the parties shall email the final documents to the Licensing Authority. The Licensing Authority will not transfer the licenses unless the documents are submitted in accordance with this paragraph.

(c) The eligibility for a license of a person to whom a business is sold or conveyed will be determined for the next quota year in accordance with § 6.23. For the purposes of § 6.23(b)(1) the person to whom a business is sold or conveyed shall be deemed to be the person to whom the historical licenses were issued during the quota year in which the sale or conveyance occurred. Further, for the purposes of § 6.23(b) and (c), the entries made under such licenses by the original licensee during the year in which the sale of conveyance is made, shall be considered as having been made by the person to whom the business was sold or conveyed.

§ 6.29 Use of licenses.

(a) An article entered under a license shall be an article produced in the country specified on the license.

(b) An article entered or withdrawn from warehouse for consumption under a license must be entered in the name of the licensee as the importer of record by the licensee or its agent, and must be owned by the licensee at the time of such entry.

(c) If the article entered or withdrawn from warehouse for consumption was purchased by the licensee through a direct sale from a foreign supplier, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill of lading from the country; and

(2) A commercial invoice or bill of sale from the seller, showing the quantity and value of the product, the date of purchase and the country; or

(3) Where the article was entered into warehouse by the foreign supplier, CBP Form 7501 endorsed by the foreign supplier, and the commercial invoice.

(d) If the article entered was purchased by the licensee via sale-in-transit, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill of lading endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(e) If the article entered was purchased by the licensee in warehouse, the licensee shall present, at the time of entry:

(1) CBP Form 7501 endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(f) The Licensing Authority may waive the requirements of paragraphs (c), (d) or (e), if it determines that because of strikes, lockouts or other unusual circumstances, compliance with those requirements would unduly interfere with the entry of such articles.

(g) Nothing in this subpart shall prevent the use of immediate delivery in accordance with the provisions of CBP regulations relating to tariff-rate quotas.

§ 6.30 Record maintenance and inspection.

A licensee shall retain all records relating to its purchases, sales and transactions governed by this subpart, including all records necessary to establish the licensee's eligibility, for five years subsequent to the end of the quota year in which such purchases, sales or transactions occurred. During that period, the licensee shall, upon reasonable notice and during ordinary hours of business, grant officials of the U.S. Department of Agriculture full and complete access to the licensee's premises to inspect, audit or copy such records.

§ 6.31 Debarment and suspension.

The provisions in 7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), subparts A through E, apply to this subpart.

§ 6.32 Globalization of licenses.

If the Licensing Authority determines that entries of an article from a country are likely to fall short of that country's allocated amount as indicated in appendices 1, 2, and 3, the Licensing Authority may permit, with the approval of the Office of the United States Trade Representative, the applicable licensees to enter the remaining balance or a portion thereof from any country during that quota year. Requests for consideration of such adjustments must be submitted to the Licensing Authority no later than September 1. The Licensing Authority will obtain prior consent for such an adjustment of licenses from the government of the exporting country for quantities in accordance with the Uruguay Round commitment of the United States. No globalization requests will be considered prior to April 1 of each year.

§ 6.33 License fee.

(a) A fee will be assessed each quota year for each license to defray the Department's costs of administering the

licensing system. To the extent practicable, the fee will be announced by the Licensing Authority in a notice published in the **Federal Register** no later than August 31 of the year preceding the quota year for which the fee is assessed.

(b) The license fee for each license issued is due and payable in full no later than March 15 of the year for which the license is issued. The fee for any license issued after March 15 of any quota year is due and payable in full no later than 10 days from the date of issuance of the license. Fee payments are payable to the Treasurer of the United States and shall be made utilizing the electronic software designated for the purpose by the Licensing Authority as provided in § 6.36(b).

(c) If the license fees for all licenses issued to a licensee are not paid by the final payment date, a hold will be placed on the use of all licenses issued to the licensee and no articles will be permitted entry under those licenses. The Licensing Authority shall send a warning letter by email advising the licensee that if payment is not made in accordance with § 6.36(b) and received within 10 calendar days from the date of the email, all licenses issued to that licensee will be revoked. Where the license at issue is a historical license, this will result, pursuant to § 6.23(b), in the person's loss of historical eligibility for such license.

§ 6.34 Adjustment of appendices.

(a) Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2.

(b) The cumulative annual transfers to Appendix 2 made in accordance with paragraph (a) will be published in the **Federal Register**. If a transfer results in the addition of a new article, or an article from a country not previously listed in Appendix 2, the Licensing Authority shall afford all eligible applicants for that quota year the opportunity to apply for a license for such article.

§ 6.35 Correction of errors.

(a) If a person demonstrates, to the satisfaction of the Licensing Authority, that errors were made by officers or employees of the United States Government, the Licensing Authority will review and rectify the errors to the extent permitted under this subpart.

(b) To be considered, a person must provide sufficient documentation regarding the error to the Licensing Authority by email, not later than August 31 of the calendar year following the calendar year in which the error was alleged to have been committed.

(c) If the error resulted in the loss of a historical license by a license holder, the Licensing Authority will transfer the amount of such license from Appendix 2 to Appendix 1 in order to provide for the issuance of such license in the calendar year following the calendar year for which the license was revoked. The cumulative annual transfers to Appendix 1 in accordance with this paragraph will be published in the **Federal Register**.

§ 6.36 Miscellaneous.

(a) If any deadline date in this subpart falls on a Saturday, Sunday, or a Federal holiday, then the deadline shall be the next business day.

(b) All applications and fee payments required under this subpart shall be made utilizing the electronic software designated for this purpose by the Licensing Authority, and official correspondence with the Licensing Authority, except as provided under § 6.28(b), shall be by email.

§ 6.37 [Removed]

■ 4. Section 6. 37 is removed.

Dated: August 21, 2014.

Philip C. Karsting,

Administrator, Foreign Agricultural Service.

[FR Doc. 2014–29807 Filed 12–22–14; 8:45 am]

BILLING CODE 3410–10–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 607, 614, 615, 620 and 628

RIN 3052–AC81

Regulatory Capital Rules: Regulatory Capital, Implementation of Tier 1/Tier 2 Framework

AGENCY: Farm Credit Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Farm Credit Administration (FCA or we) published a proposed rule that would revise our regulatory capital requirements for Farm Credit System (System) institutions to include tier 1 and tier 2 risk-based capital ratio requirements (replacing core surplus and total surplus requirements), a tier 1 leverage requirement (replacing a net collateral requirement for System banks), a capital conservation buffer, revised risk weightings, and additional public disclosure requirements. The revisions to the risk weightings would include alternatives to the use of credit ratings, as required by section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act. To allow interested parties additional time to submit comments, we are extending the comment period on the proposed rule from January 2, 2015 to February 16, 2015.

DATES: Comments on the proposed rule must be submitted on or before February 16, 2015.

ADDRESSES: For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we no longer accept comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send an email to *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: J. C. Floyd, Associate Director, Finance and Capital Markets Team, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434, or Rebecca S. Orlich, Senior Counsel, or Jennifer A. Cohn, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean,

VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On September 4, 2014, the FCA published a proposed rule in the **Federal Register** seeking public comment on proposed changes to our capital regulations. *See* 79 FR 52814. The comment period is scheduled to close on January 2, 2015. The FCA received several letters in response to the proposed rule requesting we extend the comment period by 90 days. The requesters asserted that the proposed rule would have the most impact of any rule the FCA has ever adopted and is the longest and most complex proposal in the System's history. In addition, they noted that its comment period overlapped with the comment periods of several other important regulations and also with year-end business planning. They would like additional time to evaluate the impact of the rule.

The FCA supports public involvement and participation in its regulatory process and invites all interested parties to review and comment on our proposed rule. We balanced the reasons provided with the request for more time against the substantial time period the requesters have had to consider and provide comments on the rule.[1] As a result, we are extending the comment period 45 days instead of the requested 90 days.

Dated: December 17, 2014.

Mary Alice Donner,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 2014–30061 Filed 12–22–14; 8:45 am]

BILLING CODE 6705–01–P

[1] As of December 10, 2014, the Agency has received over 560 comment letters on the proposed rule.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109187–11]

RIN 1545–BK15

Nonrecognition of Gain or Loss on Certain Dispositions of Installment Obligations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the nonrecognition of gain or loss on certain dispositions of an installment obligation. In general, under the proposed regulations a transferor does not recognize gain or loss on certain dispositions of an installment obligation if gain or loss is not recognized on the disposition under another provision of the Internal Revenue Code. The proposed regulations also provide that this general rule does not apply to the satisfaction of an installment obligation. For example, an installment obligation of an issuer, such as a corporation or partnership, is satisfied when the holder transfers the obligation to the issuer for an equity interest in the issuer.

DATES: Comments or a request for a public hearing must be received by March 23, 2015.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–109187–11), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–109187–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–109187–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Arvind Ravichandran, (202) 317–4718; concerning the submission of comments and/or requests for a public hearing, Olawafunmilayo (Funmi) Taylor at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the regulations in 26 CFR part 1 under section 453B of the Internal Revenue Code (Code) relating to gain or loss on the disposition of installment obligations. Section 453B was added to the Code by the Installment Sales Revision Act of 1980, Public Law 96–471 (94 Stat. 2252 (1980)).

Section 453B replaces and provides generally the same rules as former section 453(d). In general, under section 453B(a) gain or loss is recognized upon the satisfaction of an installment obligation at other than its face value, or upon the distribution, transmission, sale, or other disposition of the installment obligation. Section 1.453–9(c)(2) of the Income Tax Regulations, issued under former section 453(d), provides an exception to the general rule. Under § 1.453–9(c)(2), if the Code provides an exception to the recognition of gain or loss for certain dispositions, then gain or loss is not recognized under former section 453(d) on the disposition of an installment obligation within that exception. The exceptions identified in § 1.453–9(c)(2) include certain transfers to corporations under sections 351 and 361, contributions to partnerships under section 721, and distributions by partnerships to partners under section 731 (except as provided by section 736 and section 751).

Under Rev. Rul. 73–423, 1973–2 CB 161, the exceptions in § 1.453–9(c)(2) to recognition of gain or loss under the installment sale rules do not apply to the transfer of an installment obligation that results in a satisfaction of the obligation. Thus, the revenue ruling holds that the transfer of a corporation's installment obligation to the issuing corporation in exchange for stock of the issuing corporation results in a satisfaction of the obligation. In that case, the transferor must recognize gain or loss on the satisfaction of the obligation to the extent of the difference between the transferor's basis in the obligation and the fair market value of the stock received, even though gain or loss generally is not recognized on section 351 transfers.

Explanation of Provisions

These proposed regulations republish in § 1.453B–1(c) the general rule in § 1.453–9(c)(2) under which gain or loss is not recognized upon certain dispositions. In addition, the proposed regulations incorporate and expand the holding of Rev. Rul. 73–423 to provide that a transferor recognizes gain or loss under section 453B(a) when the transferor disposes of an installment obligation in a transaction that results in the satisfaction of the installment obligation, including, for example, when an installment obligation of a corporation or partnership is contributed to the corporation or partnership in exchange for an equity interest in the corporation or partnership. Finally, the proposed regulations amend the regulations under sections 351, 361, and 721 to include a cross-reference to the regulations under section 453B regarding recognition of any gain or loss upon the satisfaction of an installment obligation. The IRS and the Treasury Department anticipate publishing regulations addressing the general rule under section 453B(a) and the basis of an obligation under section 453B(b) in the future. Therefore, regulations under § 1.453B–1(a) and (b) are reserved.

Proposed Effective/Applicability Date

These regulations are proposed to apply to satisfactions, distributions, transmissions, sales, or other

dispositions of installment obligations after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely to the IRS as prescribed in this preamble under the ''Addresses'' heading. The Treasury Department and the IRS invite comments on all aspects of the proposed rules. In particular, the Treasury Department and the IRS request comments on how a partnership's distribution of a partner's installment obligation to the obligor partner should be treated under section 453B, and whether there are circumstances in which such a distribution should not result in gain or loss recognition by the partnership. All comments will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Arvind Ravichandran, Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and record keeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.351–1(a)(1) is amended by adding a heading and new second and third sentences to read as follows:

§ 1.351–1 Transfer to corporation controlled by transferor.

(a)(1) *In general.* * * * See § 1.453B–1(c) for rules requiring a transferor to recognize gain or loss upon the satisfaction of an installment obligation of a corporation when the obligation is exchanged for stock in that corporation. The preceding sentence applies to satisfactions of installment obligations after the date these regulations are published as final regulations in the **Federal Register**.* * *

* * * * *

■ **Par. 3.** Section 1.361–1 is amended by adding new second and third sentences to read as follows:

§ 1.361–1 Nonrecognition of gain or loss to corporations.

* * * See § 1.453B–1(c) for rules requiring a corporation transferring an installment obligation to the acquiring corporation (as that term is used in § 1.368–1) to recognize gain or loss upon the receipt of stock of the acquiring corporation or another party to the reorganization (as defined in § 1.368–2(f)) in satisfaction of that installment obligation. The preceding sentence applies to satisfactions of installment obligations after the date these regulations are published as final regulations in the **Federal Register**.* * *

■ **Par. 4.** Section 1.453B–1 is added to read as follows:

§ 1.453B–1 Gain or loss on disposition of installment obligations.

(a) *General rule.* [Reserved].

(b) *Basis of obligation.* [Reserved].

(c) *Dispositions on which no gain or loss is recognized.*

(1) *Certain nonrecognition transactions*—(i) *In general.* If the Internal Revenue Code provides an exception to the recognition of gain or loss for certain dispositions, no gain or loss shall be recognized under section 453B on the disposition of an installment obligation within that exception. These exceptions include—

(A) Certain transfers to corporations under sections 351 and 361;

(B) Contributions to a partnership under section 721; and

(C) Distributions by a partnership to a partner under section 731 (except as provided by sections 704(c)(1)(B), 736, 737, and 751(b)).

(ii) *Transactions resulting in a satisfaction of installment obligations.* Paragraph (c)(1)(i) of this section does not apply to a disposition that results in a satisfaction of an installment obligation, regardless of whether the disposition occurs as part of a transaction for which the Internal Revenue Code provides an exception to the recognition of gain or loss. These dispositions include, but are not limited to—

(A) The receipt of stock of a corporation from the corporation in satisfaction of an installment obligation of the corporation; and

(B) The receipt of an interest in a partnership from the partnership in satisfaction of an installment obligation of the partnership.

(2) *Effective/applicability date.* This paragraph (c) applies to satisfactions, distributions, transmissions, sales, or other dispositions of installment obligations after the date these regulations are published as final regulations in the **Federal Register**.

■ **Par. 5.** Section 1.721–1(a) is amended by adding new ninth and tenth sentences to read as follows:

§ 1.721–1 Nonrecognition of gain or loss on contribution.

(a) * * * For rules in determining a partner's gain or loss when an installment obligation of a partnership is contributed to the partnership, see section 453B and § 1.453B–1(c). The preceding sentence applies to satisfactions of installment obligations after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2014–30103 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Address Quality Measurement Alternative

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to add a new Address Quality Measurement process for participating mailers, who enter eligible basic and full-service mailings.

DATES: Submit comments on or before January 22, 2015.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC, by appointment only, between 9 a.m. and 4 p.m., Monday through Friday by calling 202–268–2906 in advance. Comments by email, containing the name and address of the commenter, may be sent to: *ProductClassification@usps.gov,* with a subject line of ''Address Quality Measurement.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Heather Dyer (207) 482–7217, email: *heather.l.dyer@usps.gov.*

SUPPLEMENTARY INFORMATION: The Postal Service continues to look for opportunities to work with mailers on improving address quality and reducing undeliverable-as-addressed (UAA) mail. One key driver of UAA mail is outdated address information resulting from changes when a postal customer moves.

With the advent of Intelligent Mail® barcodes (IMb) and electronic documentation (eDoc), the Postal Service has established new tools to measure address quality pertaining to move-related changes. The Address Quality Measurement Tool is a scorecard that will be used to convey information on address hygiene. This data-driven approach will allow the Postal Service to provide valuable feedback to mailers who enter qualifying mailings.

After an initial period, and subject to the appropriate regulatory approvals, the Postal Service plans to assess an Address Quality Assessment Fee on mailpieces in qualifying mailings that contain change-of-address (COA) errors in excess of a published threshold. The Postal Service is sharing the scorecard now so that mailers will have an opportunity to improve their address quality before the Address Quality Assessment Fee is implemented. The Postal Service proposes to use the Address Quality Measurement Tool for qualifying mailings of Bound Printed Matter (BPM) flats and letter- and flat-size First-Class Mail®, Periodicals, and Standard Mail® pieces. In the future, mailpieces that do not meet address quality compliance would be subject to an Address Quality Assessment Fee.

Currently, the Postal Service requires mailers to update addresses related to COA through the Move Update requirements. Those standards will continue for non-qualifying mailings.

In addition, the Postal Service intends to extend free address change service (ACS™) to mailers who submit mailing information using eDoc and enter mailings that contain greater than 75 percent full-service eligible mailpieces for the calendar month, including Basic IMb, single-piece, and residual pieces contained within such mailings. The Postal Service is also considering ending the requirement that Periodicals pay for manual address corrections unless such manual address correction notifications are specifically requested by the Periodicals mailer. These changes would also need regulatory approvals.

Background

Today, when a mailing is entered, Move Update quality and error assessments may be evaluated on a mail sample by use of the Mail Evaluation Readability Lookup Instrument (MERLIN™) process. Since August 2014, USPS technology has further evolved so that, when mailers use an IMb and submit their postage statements and supporting documentation via eDoc, mail stream data collection can be used to evaluate the move-related quality for mail being processed. Therefore, the Postal Service proposes to use this new technology to evaluate address quality on specific mailings.

Criteria

The proposed Address Quality Measurement Tool and Assessment Fee will be only for mailings that meet the following requirements:

- Use a Basic or full-service IMb on their mailpieces.
- Use eDoc to submit mailing information.
- Qualify 75 percent or more of their mailpieces per calendar month as full-service.

Once the assessment fee is in place, qualifying mailings will no longer be required to demonstrate or document other USPS-approved Move Update methods that are being used to update their address list. However, the Postal Service recommends that all mailers continue to use a Move Update method to remain below the compliance threshold; expedite the delivery of their customer's mail by avoiding mail forwarding; and increase the security and privacy of sensitive customer information.

Specifications

The following specifications will be used to measure address quality regarding the currency of updating addresses related to customer moves, identify errors, and ultimately assess errors over the specified threshold:

- Analysis will be performed on all pieces in the mailing, rather than on a sample.
- The assessment will be determined by the number of COA errors, in a calendar month, divided by the total number of pieces mailed that were subject to analysis. The resulting percentage is compared to an error threshold established by USPS.

COA errors are those pieces that fail to include the new address for a customer with a COA order on file for more than 95 days and less than 18 months old, as specified below.

Mailpiece Results

- Data collected from the mail stream will be reconciled to eDoc documentation.
- The results will be displayed in the Mailer Scorecard on the Electronic Verification tab by accessing the Business Customer Gateway (BCG) at *https://gateway.usps.com/bcg/detail.htm.*
- Mailers will be able to review the Mailer Scorecard and corresponding detailed reports to identify any anomalies or issues.
- Issues may be raised to the *PostalOne!* ® Help Desk at 1–800–522–9085 or through local Business Mail Acceptance employees.
- For the test period, the initial threshold will be set to 0.8%. In the future, the Postal Service plans to assess mailers for errors in excess of the error threshold.
- For example, if the error threshold were set to 0.8%, 10,000 pieces are mailed in a calendar month, and one percent (100 pieces) is in error, then 0.2 percent (= 1%–0.8%) or a total of 20 pieces (= 100–80) would be assessed.

The Postal Service is sharing the scorecard now so that mailers will have an opportunity to improve their address quality before the Address Quality Assessment Fee is implemented.

Implementation of Address Quality Assessment Fee

The Postal Service plans to implement the Address Quality Assessment Fee during the calendar year of 2015, after appropriate regulatory approvals.

Notice about changes regarding the extension of free address correction service and any withdrawal of the requirement for the payment of manual address correction notices for Periodicals will be provided at a later date.

The Postal Service invites all comments and feedback.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1. Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Mailing Standards for All Mailing Services

* * * * *

602 Addressing

* * * * *

[Revise the title of 602.5.0 as follows:]

5.0 Move Update and Address Quality Standards

5.1 Basic Standards for Move Update

[Revise the introductory paragraph only of 602.5.1 as follows:]

The Move Update standard requires the periodic matching of a mailer's address records with customer-filed change-of-address orders maintained by USPS. Each address, except for mail bearing an alternative address format (under 3.0) or meeting the Address Quality Measurement and Assessment Standards (under 5.4), in a mailing at commercial First-Class Mail presorted or automation prices, First-Class Package Service presorted parcel prices, Standard Mail, or Parcel Select Lightweight prices is subject to the Move Update standard and must meet these requirements: * * *

* * * * *

5.3 Basis for Move Update Assessment Charges

[Revise 602.5.3b as follows:]

b. Each of the assessed pieces is subject to the per piece assessment charge. See Notice 123—Price List.

* * * * *

[Revise 602.5.4 and rename as 602.5.6 and add entirely new 602.5.4 as follows:]

5.4 Basic Standards for Address Quality Measurement and Assessment

Mailings that meet these requirements will not be subject to the Move Update standards in 1.0 to 4.0. Mailers of mailings that meet the Address Quality Measurement Standards will receive access to data showing the metrics on the currency of address updating. Mailings with sufficient errors to meet the criteria under 5.5 will be subject to the Address Quality Assessment Fee. The following mailings are subject to Address Quality Measurement if they:

a. Use a Basic or full-service IMb on their mailpieces,

b. Use eDoc to submit mailing information, and

c. Qualify at least 75 percent or more of their mailpieces per calendar month as full-service.

[Add new 602.5.5 as follows:]

5.5 Basis for Address Quality Assessment Fee

Mailings that meet the standards in 5.4 are subject to an Address Quality Assessment Fee if more than [*a specified percentage*] of the mail has change of address (COA) errors, as determined by an analysis of the data captured during mail processing. Specifically, the mailpieces with addresses containing COA errors in excess of the error threshold will pay a per piece charge as follows:

a. The mailpiece's processing indicates that it contains a COA's old address and the COA ''Move Effective Date'' or ''Filed Date,'' whichever is later, is between 95 days and up to 18 months of the postage statement finalization date. This is called a Change of Address error.

b. If the percentage of mailpieces with COA errors in a calendar month is greater than the address quality error threshold for all qualifying pieces mailed in a calendar month, any pieces above the threshold are subject to an assessment.

c. Each of the assessed pieces is subject to an Address Quality Assessment Fee.

d. Mail pieces sent to an address determined to be associated with a change of address that is temporary, foreign, Moved, Left No Address (MLNA), or Box Closed No Order (BCNO) will not be included in determining the assessment.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes, if our proposal is adopted.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–29943 Filed 12–22–14; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–132751–14]

RIN 1545–BM44

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB70

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 146

[CMS–9946–P2]

RIN 0938–AS52

Amendments to Excepted Benefits

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Proposed rules.

SUMMARY: This document contains proposed rules that would amend the

regulations regarding excepted benefits under the Employee Retirement Income Security Act of 1974, the Internal Revenue Code (the Code), and the Public Health Service Act related to limited wraparound coverage. Excepted benefits are generally exempt from the requirements that were added to those laws by the Health Insurance Portability and Accountability Act and the Patient Protection and Affordable Care Act.

DATES: Comments are due on or before January 22, 2015.

ADDRESSES: Written comments may be submitted to the Department of Labor as specified below. Any comment that is submitted will be shared with the other Departments and will also be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Comments, identified by ''Excepted Benefits,'' may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail or Hand Delivery: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Excepted Benefits.

Comments received will be posted without change to *www.regulations.gov* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 317–5500; Jacob Ackerman, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (410) 786–1565.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws, may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*www.cms.gov/cciio*) and information on health reform can be found at *www.HealthCare.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, 110 Stat. 1936 added title XXVII of the Public Health Service Act (PHS Act), part 7 of the Employee Retirement Income Security Act of 1974 (ERISA), and chapter 100 of the Internal Revenue Code (the Code), providing portability and nondiscrimination provisions with respect to health coverage. These provisions of the PHS Act, ERISA, and the Code were later augmented by other consumer protection laws, including the Mental Health Parity Act of 1996,[1] the Mental Health Parity and Addiction Equity Act of 2008,[2] the Newborns' and Mothers' Health Protection Act,[3] the Women's Health and Cancer Rights Act,[4] the Genetic Information Nondiscrimination Act of 2008,[5] the Children's Health Insurance Program Reauthorization Act of 2009,[6] Michelle's Law,[7] and the Affordable Care Act.[8]

The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the PHS Act relating to group health plans and health insurance issuers in the group and individual markets. The term ''group health plan'' includes both insured and self-insured group health plans.[9] Section 715(a)(1) of ERISA and section 9815(a)(1) of the Code, as added by the Affordable Care Act, incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are sections 2701 through 2728.

Sections 2722 and 2763 of the PHS Act, section 732 of ERISA, and section 9831 of the Code provide that the requirements of title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, respectively, generally do not apply to excepted benefits. Excepted benefits are described in section 2791 of the PHS Act, section 733 of ERISA, and section 9832 of the Code.

The parallel statutory provisions establish four categories of excepted benefits. The first category includes benefits that are generally not health coverage[10] (such as automobile insurance, liability insurance, workers compensation, and accidental death and dismemberment coverage). The benefits in this category are excepted in all circumstances. In contrast, the benefits in the second, third, and fourth categories are types of health coverage but are excepted only if certain conditions are met.

The second category of excepted benefits is limited excepted benefits, which may include limited scope vision or dental benefits, and benefits for long-term care, nursing home care, home health care, or community based care. Section 2791(c)(2)(C) of the PHS Act, section 733(c)(2)(C) of ERISA, and section 9832(c)(2)(C) of the Code authorize the Secretaries of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Secretaries) to issue regulations establishing other, similar limited benefits as excepted benefits. The Secretaries exercised this authority previously with respect to certain health flexible spending arrangements (health FSAs).[11] To be excepted under this second category, the statute (specifically, ERISA section 732(c)(1), PHS Act section 2722(c)(1), and section 9831(c)(1) of the Code) provides that limited benefits must either: (1) Be provided under a separate policy, certificate, or contract of insurance; or (2) otherwise not be an

[1] Public Law 104–204, 110 Stat. 2944 (September 26, 1996).

[2] Public Law 110–343, 122 Stat. 3881 (October 3, 2008).

[3] Public Law 104–204, 110 Stat. 2935 (September 26, 1996).

[4] Public Law 105–277, 112 Stat. 2681–436 (October 21, 1998).

[5] Public Law 110–233, 122 Stat. 881 (May 21, 2008).

[6] Public Law 111–3, 123 Stat. 65 (February 4, 2009).

[7] Public Law 110–381, 122 Stat. 4081 (October 9, 2008).

[8] The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010. (These statutes are collectively known as the ''Affordable Care Act''.)

[9] The term ''group health plan'' is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term ''health plan,'' as used in other provisions of title I of the Affordable Care Act. The term ''health plan'' does not include self-insured group health plans.

[10] See 62 FR 16894, 16903 (Apr. 8, 1997), which states that these benefits are generally not health insurance coverage).

[11] 26 CFR 54.9831–1(c)(3)(v); 29 CFR 2590.732(c)(3)(v); 45 CFR 146.145(b)(3)(v).

integral part of a group health plan, whether insured or self-insured.[12]

The third category of excepted benefits, referred to as ''noncoordinated excepted benefits,'' includes both coverage for only a specified disease or illness (such as cancer-only policies), and hospital indemnity or other fixed indemnity insurance. In the group market, these benefits are excepted only if all of the following conditions are met: (1) The benefits are provided under a separate policy, certificate, or contract of insurance; (2) there is no coordination between the provision of such benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor; and (3) the benefits are paid with respect to any event without regard to whether benefits are provided under any group health plan maintained by the same plan sponsor.[13]

The fourth category of excepted benefits is supplemental excepted benefits. Such benefits must be: (1) Coverage supplemental to Medicare, coverage supplemental to the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) or to Tricare, or similar coverage that is supplemental to coverage provided under a group health plan; and (2) provided under a separate policy, certificate, or contract of insurance.[14]

In 2004, the Departments of the Treasury, Labor, and HHS published final regulations with respect to excepted benefits (the HIPAA regulations).[15] (Subsequent references to the ''Departments'' include all three Departments, unless the headings or context indicate otherwise.)

On December 24, 2013, the Departments issued additional proposed regulations with respect to the second category of excepted benefits, limited excepted benefits (2013 proposed regulations).[16] These regulations proposed to: (1) Eliminate the requirement that participants in self-insured plans pay an additional premium or contribution for limited-scope vision or dental benefits to qualify as benefits that are not an integral part of the plan; (2) set forth the criteria under which employee assistance programs (EAPs) that do not provide significant benefits in the nature of medical care constitute excepted benefits; and (3) allow plan sponsors in limited circumstances to offer, as excepted benefits, coverage that wraps around certain individual health insurance coverage in certain circumstances.

After consideration of comments received on the 2013 proposed regulations, the Departments published final regulations regarding dental and vision benefits and EAP benefits on October 1, 2014 (2014 final regulations).[17] Consistent with the 2013 proposed regulations, the 2014 final regulations eliminated the requirement under the HIPAA regulations that participants pay an additional premium or contribution for limited-scope vision or dental benefits to qualify as excepted benefits. With respect to EAPs, the Departments finalized the proposal with one modification related to financing.[18] In the 2014 final regulations, the Departments also stated their intent to publish regulations that addressed limited wraparound coverage in the future, taking into account the extensive comments received on this issue.[19]

As explained in the preamble to the 2013 proposed regulations, some group health plan sponsors have asked whether certain limited benefits that ''wrap around'' employer-sponsored group health plan coverage[20] could be considered an excepted benefit if such benefits are provided to employees for whom the employer's group health plan coverage that is otherwise offered to them (''primary'' coverage) is unaffordable, and who instead obtain major medical coverage through the individual market, including through the Affordable Insurance Exchange, or ''Exchange'' (also called a Health Insurance Marketplace, or Marketplace). Specifically, the preamble to the 2013 proposed regulations noted that experts suggest that most workers who are offered minimum value coverage under their employer's primary group health plan will not meet the criteria for that coverage to be considered ''unaffordable'' within the meaning of the statute and thus will not qualify for the premium tax credit for enrolling in individual health coverage through an Exchange.[21] However, the preamble went on to note that coverage under such a primary group health plan may be unaffordable for some employees, who might instead purchase individual health coverage through an Exchange with a premium tax credit. While such individuals might pay lower premiums for such individual health coverage through an Exchange than they would pay for major medical coverage offered through their employer's group health plan, the individual coverage in the Exchange might also provide less generous coverage in terms of benefits or a different provider network than the coverage provided under their employer's group health plan. The 2013 proposed regulations intended to permit employers to provide such employees with overall coverage that is comparable to the employer's group health plan by providing them with limited employer-sponsored coverage that would add to and wrap around the individual market coverage that the employee purchases through the Exchange. If the employer chose to provide such limited employer-sponsored wraparound coverage, that coverage would qualify as an excepted benefit and therefore would not preclude the employee from obtaining a premium tax credit to assist in purchasing the individual coverage through the Exchange if the employee was otherwise eligible for a premium tax credit.

The 2013 proposed regulations outlined requirements under which certain employer-sponsored wraparound coverage provided under a group health plan would be treated as excepted benefits when offered to individuals who could have received the benefits provided in the wraparound coverage through their employer's primary group health plan, however the primary plan is unaffordable and they

[12] See the discussion in the 2014 final regulations concerning the application of these requirements to benefits such as limited-scope dental and vision benefits and employee assistance programs at 79 FR 59131 (Oct. 1, 2014).

[13] 26 CFR 54.9831–1(c)(4); 29 CFR 2590.732(c)(4); 45 CFR 146.145(b)(4). *See also* Q7 in Affordable Care Act Implementation FAQs Part XI, available at *http://www.dol.gov/ebsa/faqs/faq-aca11.html.*

[14] 26 CFR 54.9831–1(c)(5); 29 CFR 2590.732(c)(5); 45 CFR 146.145(b)(5). The Departments issued additional guidance regarding supplemental health insurance coverage as excepted benefits. *See* EBSA Field Assistance Bulletin No. 2007–04 (available at *http://www.dol.gov/ebsa/pdf/fab2007-4.pdf*); CMS Insurance Standards Bulletin 08–01 (available at *http://www.cms.gov/CCIIO/Resources/Files/Downloads/hipaa_08_01_508.pdf*); and IRS Notice 2008–23 (available at *http://www.irs.gov/irb/2008-07_IRB/ar09.html*).

[15] 69 FR 78720 (Dec. 30, 2004).

[16] 78 FR 77632.

[17] 79 FR 59131 (Oct. 1, 2014).

[18] The 2014 final regulations do not include the requirement set forth in the 2013 proposed regulations that EAP benefits cannot be financed by another group health plan in order to qualify as excepted benefits. See 79 FR 59134.

[19] 79 FR 59131.

[20] A group health plan may be sponsored by an employer, an employee organization, or both. For simplicity, this preamble generally refers to employer-sponsored coverage. However, these proposed regulations would be equally applicable to group health plans sponsored by employee organizations, or jointly by employers and employee organizations.

[21] *See* Congressional Budget Office, CBO and JCT Estimates of the Effects of the Affordable Care Act on the Number of People Obtaining Employer-Based Insurance, March 2012, at Table 2, available at *http://www.cbo.gov/sites/default/files/cbofiles/attachments/03-15-ACA_and_Insurance_2.pdf. See also* Carter C. Price & Evan Saltzman, *Delaying the Employer Mandate,* July 2013, available at *http://www.rand.org/pubs/research_reports/RR411.html..*

do not enroll in that primary plan. The 2013 proposed regulations were intended to allow a plan sponsor to pursue equity in coverage by maintaining a comparable level of benefits for all potential enrollees, including not only higher-income workers enrolled in the employer's primary group health plan but also lower-income workers, enrolled in non-grandfathered individual market coverage. Under the 2013 proposed regulations, employer-provided wraparound coverage would constitute excepted benefits (limited wraparound coverage) and therefore would not disqualify an employee from eligibility for the premium tax credit and cost-sharing reductions, if five conditions were met.

First, under the 2013 proposed regulations, the coverage could wrap around only certain coverage provided through the individual market. Specifically, the individual health insurance coverage would have to be non-grandfathered and could not consist solely of excepted benefits. In States that elect to establish a Basic Health Program (BHP), certain low-income individuals (for example, those with household income between 133% and 200% of the Federal poverty level) who would otherwise qualify for a tax credit to obtain a qualified health plan through an Exchange would instead be enrolled in coverage through the BHP. The Departments invited comments on how an employer might make wraparound coverage available to BHP enrollees.

Second, the 2013 proposed regulations would have required that limited wraparound coverage be specifically designed to provide benefits beyond those offered by the individual health insurance coverage. Specifically, the limited wraparound coverage would have been required to provide either benefits that are in addition to essential health benefits (EHBs), or reimburse the costs of items and services provided by health care providers considered out-of-network under the individual health insurance coverage, or both. Additionally, the 2013 proposed regulations stated that the limited wraparound coverage could, but would not be required to, provide benefits to reimburse for participants' otherwise applicable cost sharing under the individual health insurance policy. Reimbursement for participants' otherwise applicable cost sharing could not be its primary purpose since Affordable Care Act-compliant individual health insurance policies already offer lower cost sharing at higher metal tiers (gold and platinum). For the benefits to be considered specifically designed to wrap around the individual health insurance coverage, they would have to provide additional benefits; the coverage could not, under the proposed regulations, provide benefits solely pursuant to a coordination-of-benefits provision that simply pays benefits whenever the individual health insurance policy does not cover all or part of a medical expense.

The third condition of the 2013 proposed regulations would have required the plan sponsor offering the limited wraparound coverage to sponsor another group health plan providing minimum value (as defined under section 36B(c)(2)(C)(ii) of the Code) for the plan year, referred to as the ''primary plan.'' This primary plan would have to be affordable for a majority of the employees eligible for the primary plan, and only individuals eligible for this primary plan could be eligible for the limited wraparound coverage.

Under the fourth condition set forth in the 2013 proposed regulations, the total cost of the employer's limited wraparound coverage would have to be limited, so as not to exceed 15 percent of the cost of coverage under the employer's primary plan offered to employees eligible for the wraparound coverage.[22] For this purpose, the cost of coverage would include both employer and employee contributions towards coverage and would be determined in the same manner as that in which the applicable premium is calculated under a Consolidated Omnibus Reconciliation Act of 1985 (COBRA) continuation provision.[23] This is similar to the standard in the 2007 enforcement safe harbor for treating supplemental health insurance coverage as excepted benefits, under which the cost of coverage under the supplemental policy, certificate, or contract of insurance must not exceed 15 percent of the cost of primary coverage.[24]

The fifth and final condition for the limited wraparound coverage to qualify as excepted benefits under the 2013 proposed regulations relates to nondiscrimination. The limited wraparound coverage could not discriminate against individuals in eligibility, benefits, or premiums based on any health factor of an individual (or any dependent of the individual), consistent with the requirements of section 2705 of the PHS Act (incorporated by reference into ERISA section 715 and Code section 9815) and its implementing regulations. As explained in the preamble to the 2013 proposed regulations, this condition is similar to the standard in the 2007 enforcement safe harbor treating supplemental health insurance coverage as excepted benefits and rules for Medicare supplemental coverage.[25]

To satisfy the fifth condition under the 2013 proposed regulations, the limited wraparound coverage also could not impose any preexisting condition exclusion, consistent with the requirements of section 2704 of the PHS Act (as incorporated into ERISA section 715 and Code section 9815) and its implementing regulations. Finally, both the primary coverage and the limited wraparound coverage could not discriminate in favor of highly compensated individuals, consistent with the provisions of section 2716 of the PHS Act (also incorporated by reference into ERISA section 715 and Code section 9815) and section 105(h) of the Code, and its implementing regulations at 26 CFR 1.105–11, as applicable.[26] The preamble to the 2013 proposed regulations clarified that these limitations were intended to ensure the coverage is available regardless of health status and to prevent employers from shifting employees with high medical costs to an Exchange.[27] Conditioning excepted benefit status on meeting standards consistent with the compensation-based nondiscrimination rules, in combination with the

[22] If an employer provides more than one primary plan option (for example, a health maintenance organization option and a preferred provider organization option), and one primary plan does not satisfy the 15 percent standard but another plan does, the Departments stated in the preamble to the 2013 proposed regulations that they would consider the 15 percent standard to be met if the average value of the primary plan options meets the 15 percent standard.

[23] Under the COBRA rules, plans are generally permitted to charge up to 102 percent of the applicable premium. See § 4980B(f)(2)(C)(i) of the Code. The cost of coverage for purposes of these proposed regulations is 100 percent of the applicable premium, not 102 percent of the applicable premium that the plan is generally permitted to charge under the COBRA rules. ''Applicable premium'' is defined at § 4980B(f)(4) of the Code.

[24] The Departments issued parallel guidance regarding supplemental health insurance coverage as excepted benefits under HIPAA and related legislation. *See* EBSA Field Assistance Bulletin No. 2007–04 (available at *http://www.dol.gov/ebsa/pdf/fab2007-4.pdf*); CMS Insurance Standards Bulletin 08–01 (available at *http://www.cms.gov/CCIIO/Resources/Files/Downloads/hipaa_08_01_508.pdf*); and IRS Notice 2008–23 (available at *http://www.irs.gov/irb/2008-07_IRB/ar09.html*).

[25] 75 FR 77636.

[26] Section 2716 of the PHS Act (as incorporated into ERISA and the Code) generally applies to insured coverage and section 105(h) of the Code and its implementing regulations generally apply to self-insured coverage.

[27] 78 FR at 77636.

requirement that the primary plan be affordable for a majority of the employees who are eligible for it, was intended to help ensure that employers would not be able to use wraparound coverage to send excessive numbers of low wage workers to the Exchanges.[28]

After consideration of comments on the 2013 proposed regulations, the Departments are publishing these proposed regulations to address limited wraparound coverage and solicit comment before promulgation of final regulations on limited wraparound benefits.

II. Overview of These Proposed Regulations

The Departments received general comments on the 2013 proposed regulations, as well as on the five conditions for wraparound coverage to qualify as excepted benefits. Many commenters suggested that limited wraparound coverage should be considered supplemental excepted benefits instead of limited excepted benefits, which would eliminate the need for the wraparound coverage to not be an integral part of a group health plan.[29] Some commenters suggested a more simplified approach to wraparound coverage rather than the five conditions outlined in the proposed regulations, such as adopting a more subjective test so that reasonable efforts to comply with the conditions to be excepted benefits will not cause a plan to fail to qualify as such. Others requested that the standards for limited wraparound coverage to qualify as excepted benefits track the same standards and safe harbors for applicable large employers under section 4980H of the Code and its implementing regulations, for ease of administration and consistency.

Many commenters suggested modifications to the second condition of the 2013 proposed regulations, requiring that limited wraparound coverage be specifically designed to provide benefits beyond those offered by the individual health insurance coverage. Some suggested that the goal of limited wraparound coverage should be to fill gaps in cost sharing, as the individual health insurance policy would provide coverage of EHB. Others disagreed, requesting that this condition be changed so that cost sharing would not be the primary purpose of the wraparound coverage, because individuals who wish to reduce their cost sharing can do so by purchasing a higher ''metal level'' of coverage. Additionally, commenters questioned how to choose which benefits to offer in addition to what is covered under the individual health insurance policy without knowing what benefits each employee will receive under their individual health insurance coverage. Some commenters suggested that benefits provided under the wraparound coverage mirror the benefits offered under the employer's primary plan.

Commenters also recommended changes to the third condition, that the plan sponsor offer another, primary group health plan that provides minimum value and is affordable for a majority of the employees eligible for the primary plan. Some asked that this requirement be deleted altogether. Others stated that the ''majority'' test conflicts with the 95% test under section 4980H(a) of the Code, and that this difference would introduce complexity and confusion, and suggested that Form W–2 employee wages and other safe harbor rules under section 4980H of the Code and the accompanying regulations be used to compute affordability. Some commenters requested that the eligibility test exclude part-time employees, Medicaid-eligible employees, and retirees. Other commenters asked that wraparound coverage be considered to meet this standard if the primary plan is affordable to the majority of employees enrolled in the primary plan (as opposed to the majority eligible for the primary plan).

Additionally, commenters addressed the limit that the total cost of coverage under the wraparound coverage not exceed 15 percent of the cost of coverage under the primary plan. Some commenters suggested increasing this percentage, stating that the 15 percent benchmark was based on rough Medicare estimates for supplemental coverage and is too low to wrap around a bronze or silver plan. Others asked that the limit be a simple dollar amount, similar to limits on health savings accounts or health FSAs. Additional commenters pointed out that as minimum value increases, so does the total cost of the wraparound coverage (and vice versa), and that wrapping around individual coverage makes these calculations confusing and uncertain.

After consideration of comments on the 2013 proposed regulations, the Departments are publishing these new proposed regulations with respect to limited wraparound coverage. These proposed regulations seek comment on two options for limited wraparound coverage to be considered an excepted benefit. The Departments intend that, after notice and comment, one or both options could be finalized. (That is, they are not necessarily alternatives and, therefore, could be implemented side by side).

The regulations include a sunset date and, therefore, would operate as a pilot program. While some elements of this proposal are the same as those in the previous proposal, this new proposal contains changes in response to suggestions and adds new elements for reporting and data collection to gather information to inform future rulemaking.

A. Requirements of These New Proposed Regulations

These proposed regulations set forth five requirements under which limited benefits provided through a group health plan that wrap around either eligible individual insurance or coverage under a Multi-State Plan (limited wraparound coverage) constitute excepted benefits. For this purpose, ''eligible individual health insurance'' is individual health insurance coverage that is not a grandfathered health plan,[30] not a transitional individual health insurance market plan,[31] and does not consist solely of excepted benefits.

1. Covers Additional Benefits

The limited wraparound coverage would have to be specifically designed to wrap around eligible individual health insurance.[32] That is, the limited wraparound coverage would have to provide meaningful benefits beyond coverage of cost sharing under the eligible individual health insurance. For example, the limited wraparound coverage could provide coverage for expanded in-network medical clinics or providers, or provide benefits that are not EHB and that are not covered under

[28] *Id.*

[29] The Departments note that the exception for supplemental excepted benefits is for coverage that is supplemental to coverage provided under Medicare or Tricare, or similar supplemental coverage provided to coverage under a group health plan. None of these circumstances apply here. That is, the limited wraparound coverage that is the subject of these proposed regulations is supplemental to individual insurance.

[30] *See* section 1251 of the Affordable Care Act, 29 CFR 2590.715–1251, and 45 CFR 147.140.

[31] As described in CMS Insurance Standards Bulletin (March 5, 2014) available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-policies-03-06-2015.pdf.*

[32] In States that elect to establish a Basic Health Program (BHP), certain low-income individuals (for example, those with household income between 133% and 200% of the Federal poverty level) who would otherwise qualify for a tax credit to obtain a qualified health plan through an Exchange will instead be enrolled in coverage through the BHP. Therefore, the Departments invite comments on how an employer might make wraparound coverage available to BHP enrollees.

the eligible individual health insurance. The limited wraparound coverage would not be permitted to provide benefits solely under a coordination-of-benefits provision and could not be solely an account-based reimbursement arrangement. Limited wraparound coverage that covers solely cost sharing is not permissible because reduced cost sharing can be obtained by choosing an individual health insurance policy with a higher actuarial value (for example, a platinum plan with a 90 percent actuarial value). Because the proposed regulations would permit certain eligible individuals to select any eligible individual health insurance (that is, individual health insurance coverage that is not a grandfathered health plan, not a transitional individual health insurance market plan, and does not consist solely of excepted benefits), and recognizing the complications some plan sponsors might encounter in determining what benefits or providers are not covered under that individual policy, the Departments invite comment on safe harbors standardizing the benefits in the limited wraparound coverage that could be established under this second proposed requirement.

2. Limited in Amount

The second requirement is that the limited wraparound coverage be limited in amount. For this purpose, the annual cost of coverage per employee (and any covered dependents) under the limited wraparound coverage could not exceed the maximum annual contribution for health FSAs which is $2,500 in 2014, indexed in the manner prescribed under section 125(i)(2) of the Code, and the cost of coverage would include both employer and employee contributions towards coverage and be determined in the same manner as the applicable premium is calculated under a COBRA continuation provision. The bright-line $2,500 limitation is intended to be simpler to administer than the 15 percent cap set forth in the 2013 proposed regulations.

3. Nondiscrimination

The limited wraparound coverage must meet three requirements relating to nondiscrimination in order to qualify as excepted benefits. First, the wraparound coverage could not impose any preexisting condition exclusion, consistent with the requirements of section 2704 of the PHS Act (as incorporated into section 715 of ERISA and section 9815 of the Code) and implementing regulations.[33] Second, the wraparound coverage could not discriminate against individuals in eligibility, benefits, or premiums based on any health factor of an individual (or any dependent of the individual), consistent with the requirements of section 702 of ERISA, section 9802 of the Code, and section 2705 of the PHS Act (as incorporated into section 715 of ERISA and section 9815 of the Code) and implementing regulations.[34] Finally, neither the primary group health plan coverage nor the limited wraparound coverage could fail to comply with section 2716 of the PHS Act (as incorporated into section 715 of ERISA and section 9815 of the Code) or fail to be excludible from income with respect to any individual due to the application of section 105(h) of the Code (as applicable).

4. Plan Eligibility Requirements

The fourth requirement to qualify as excepted benefits would be that individuals eligible for the limited wraparound coverage cannot be enrolled in excepted benefit coverage that is a health FSA. In addition, plans must comply with one of two alternative sets of standards relating to eligibility and benefits. One set of plan eligibility requirements applies to wraparound benefits offered in conjunction with eligible individual health insurance for persons who are not full-time employees. A separate set of standards applies to coverage that wraps around certain Multi-State Plan coverage.

a. *Eligible individual health insurance for individuals who are not full-time employees*

Limited coverage that wraps around eligible individual health insurance for an individual who is not a full-time employee must satisfy three standards relating to plan eligibility. First, for each year that wraparound coverage is offered, the employer that is the sponsor of the plan offering wraparound coverage, or the employer participating in a plan offering wraparound coverage, must offer to its full-time employees coverage that: (1) Is substantially similar to coverage that the employer would need to offer to its full-time employees in order not to be subject to a potential assessable payment under the employer shared responsibility provisions of section 4980H(a) of the Code, if such provisions were applicable (that is, substantially similar to an offer of minimum essential coverage (as defined in section 5000A(f) to at least 95 percent of its full-time employees (or to all but five of its full-time employees, if five is greater than five percent of its full-time employees)); (2) provides minimum value (as defined in section 36B(c)(2)(C)(ii) of the Code); and (3) is reasonably expected to be affordable (applying the safe harbor rules for determining affordability set forth in 26 CFR 54.4980H–5(e)(2)). If a plan or issuer providing limited wraparound coverage takes reasonable steps to ensure that employers disclose necessary information regarding their coverage offered and affordability information to the plan or issuer, the plan or issuer may rely on reasonable representations by employers regarding this information, unless the plan or issuer has specific knowledge to the contrary. Second, eligibility for the limited wraparound coverage must be limited to employees who are not full-time employees (and their dependents), or who are retirees (and their dependents). For this purpose, the Departments propose that ''full-time employees'' would be employees who are reasonably expected to work at least an average of 30 hours per week. The Departments proposal would not require plans and issuers to define ''full-time employees'' strictly in accordance with the rules of section 4980H of the Code. Because this proposal is for part-time employees, some employers who wish to take advantage of this excepted benefits option may be exempt from Code 4980H and may not already be operating under that detailed set of rules. The Departments intend that employers could rely on the 4980H definition, or any reasonable interpretation of who is reasonably expected to work an average of 30 hours a week, for purposes of this provision affecting part-time employees and invite comment on this approach.

Third, other group health plan coverage, not limited to excepted benefits, must be offered to the individuals eligible for the wraparound coverage. Only individuals eligible for other group health plan coverage may be eligible for the wraparound coverage. This third requirement is consistent with the requirement for a health FSA to qualify as excepted benefits under the Departments' excepted benefits regulations.[35]

b. *Multi-State Plan coverage*

[33] 29 CFR 2590.715–2704 and 45 CFR 147.108. *See also* Q2 in Affordable Care Act Implementation FAQs Part XXII, available at *http://www.dol.gov/ebsa/faqs/faq-aca22.html* regarding the prohibition against offering employees with high claims risk a choice between enrollment in its standard group health plan or cash.

[34] 26 CFR 54.9802–1, 29 CFR 2590.702, and 45 CFR 146.121.

[35] *See* 26 CFR 54.9831–1(c)(3)(v); 29 CFR 2590.732(c)(3)(v); 45 CFR 146.145(b)(3)(v).

For Multi-State Plan coverage limited wraparound coverage, four requirements must be satisfied. The first of the four standards requires that the limited wraparound coverage be specifically designed and approved by the Office of Personnel Management (OPM) to provide benefits in conjunction with coverage under a Multi-State Plan authorized under section 1334 of the Affordable Care Act. The Departments anticipate that health insurance issuers with whom OPM contracts to offer Multi-State Plans will be in the best position to offer this type of limited wraparound coverage. OPM may revoke approval if it determines that continued approval is inconsistent with the reporting and evaluation criteria in the proposed regulations. Second, the employer must have offered coverage in the plan year that begins in 2014 that is substantially similar to coverage that the employer would need to have offered to its full-time employees in order to not be subject to an assessable payment under the employer shared responsibility provisions of section 4980H(a) of the Code, if such provisions had been applicable (that is, substantially similar to an offer of minimum essential coverage (as defined in section 5000A(f) of the Code) to at least 95 percent of its full-time employees (or to all but five of its full-time employees, if five is greater than five percent of its full-time employees). Third, in the plan year that begins in 2014, the employer must have offered coverage to a substantial portion of full-time employees that provided minimum value (as defined in section 36B(c)(2)(C)(ii) of the Code) and was affordable (applying the safe harbor rules for determining affordability set forth in 26 CFR 54.4980H–5(e)(2)). Fourth, for the duration of the pilot program, the employer's annual aggregate contributions for both primary and limited wraparound coverage must be substantially the same as the employer's aggregate contributions for coverage offered to full-time employees in 2014. The Departments are considering interpreting this ''substantially the same'' condition as a percentage (*e.g.,* 80 or 90 percent) and potentially applying it on a per-worker basis to allow for fluctuations in an employer's workforce. The Departments seek comment on such an interpretation, as well as on all aspects of this maintenance of effort condition.

For purposes of administering this provision, with respect to limited wraparound coverage offered in conjunction with Multi-State Plan coverage, the Departments propose that the term ''full-time employee'' means a ''full-time employee'' as defined in 26 CFR 54.4980H–1(a)(21) who is not in a limited non-assessment period for certain employees (as defined in 26 CFR 54.4980H–1(a)(26)). Moreover, if a plan or issuer providing limited wraparound coverage takes reasonable steps to ensure that employers disclose necessary information regarding their coverage offered and contribution levels for 2014 to the plan or issuer, the plan or issuer may rely on reasonable representations by employers regarding this information, unless the plan or issuer has specific knowledge to the contrary. Consistent with the reporting and evaluation criteria described later in this preamble, OPM may verify that plans and issuers have reasonable mechanisms in place to ensure that contributing employers meet these standards.

5. Reporting

The fifth and final requirement for limited wraparound coverage to qualify as excepted benefits is a reporting requirement, for group health plans and group health insurance issuers, as well as group health plan sponsors.

A self-insured group health plan, or a health insurance issuer offering or proposing to offer Multi-State Plan wraparound coverage, reports to OPM, in a form and manner specified in OPM guidance, information OPM reasonably requires to determine whether the plan or issuer qualifies to offer such coverage or complies with the applicable requirements of this section.

In addition, the plan sponsor of any group health plan offering either limited wraparound coverage that wraps around eligible individual health insurance or Multi-State Plan coverage must report to HHS, in a form and manner specified in guidance, information HHS reasonably requires to determine whether the exception for limited wraparound coverage under these proposed regulations is allowing plan sponsors to provide workers with comparable benefits whether enrolled in minimum essential coverage under a group health plan offered by the plan sponsor, or a qualified health plan with additional limited wraparound coverage offered by the plan sponsor, without causing an erosion of coverage.

B. Pilot Program With Sunset Date

Under these proposed regulations, limited wraparound coverage would be permitted under a pilot program for a limited time. Specifically, this type of wraparound coverage could be offered as excepted benefits to coverage that is first offered no later than December 31, 2017 and that ends on the later of: (1) The date that is three years after the date wraparound coverage is first offered; or (2) the date on which the last collective bargaining agreement relating to the plan terminates after the date wraparound coverage is first offered (determined without regard to any extension agreed to after the date the wraparound coverage is first offered). The Departments invite comments on this time frame for applicability, including whether the Departments should have the option to provide for an earlier termination date.

C. Comment Solicitation

The Departments invite comments on these proposed regulations generally, and on the specific issues identified earlier in this preamble. The Departments also seek comments on the special circumstances of small businesses that are not subject to section 4980H of the Code. Small employers may qualify to purchase coverage through the Small-Business Health Options Program (SHOP) in their State, or they may elect to buy coverage in their state's small group market outside of the SHOP. Small businesses, like other employers, can also contribute towards a health savings account (HSA) under section 223 of the Code, which may be used in combination with a high deductible health plan (HDHP). In addition, the Departments invite comments on whether modifications to health FSAs or other existing policies tailored to the needs of small businesses may also be beneficial to employers and employees.

III. Economic Impact and Paperwork Burden

A. Summary

As discussed in detail above, these proposed regulations would amend the definition of ''limited excepted benefits'' to provide plan sponsors with two mutually exclusive options to offer limited wraparound coverage to certain individuals. Under the first option, plan sponsors could offer limited benefits provided through a group health plan that wraps around eligible individual health insurance to employees who are not full-time employees (and their dependents), or who are retirees (and their dependents). For this purpose, full-time employees are employees who are reasonably expected to work at least an average of 30 hours per week. Under the second option, the limited wraparound coverage that satisfies the requirements outlined in the regulations must be approved by OPM and be offered in conjunction with Multi-State

Plan coverage authorized under section 1334 of the Affordable Care Act.

B. Executive Orders 12866 and 13563—Departments of Labor and HHS

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a regulation: (1) Having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that the action is significant within the meaning of section 3(f)(4) of Executive Order 12866, and the Departments accordingly provide the following assessment of its potential benefits and costs.

The Departments recognize that many plan sponsors provide comprehensive health benefits to their workers. One objective of the Affordable Care Act is to allow individuals with comprehensive health insurance plans to maintain their current level of benefits. Some employers are interested in offering wraparound coverage to employees who are enrolled in a Multi-State Plan authorized under section 1334 of the Affordable Care Act or to part-time, seasonal, or part-year employees. These proposed regulations provide two options to employers that clarify the circumstances under which plan sponsors can provide such limited wraparound coverage to their employees.

The cost (and Federal budget impact [36]) of this proposal is difficult to quantify, because it is unclear how many plan sponsors will be eligible to offer and how many employees will be covered by limited wraparound benefits. It is important to note that the cost of the proposed limited wraparound coverage is limited by the proposed conditions on its availability.

For example, in order to qualify as limited excepted benefits under the individual coverage option, limited wraparound coverage can be offered only to individuals who are not full-time employees (and their dependents) or who are retirees (and their dependents), and can only wrap around eligible individual health insurance.[37] The limited wraparound coverage must provide meaningful benefits beyond coverage of cost sharing under the individual health insurance coverage.

Plan designs will be limited by nondiscrimination rules aimed at preventing plan sponsors from discriminating in favor of highly compensated employees or offering different benefits for workers along certain other dimensions such as health status. The total cost of the wraparound coverage per employee (and any covered dependents) under both options is limited to $2,500 indexed in the manner prescribed under section 125(i)(2) of the Code.

Under the Multi-State Plan wraparound option, the limited wraparound coverage that satisfies the requirements outlined in the regulations must be approved by OPM and be offered in conjunction with Multi-State Plan coverage authorized under section 1334 of the Affordable Care Act. As part of the approval process, OPM will require the wraparound coverage to provide meaningful benefits other than coverage of cost sharing under the Multi-State Plan.[38]

Coverage under both options applies to limited wraparound coverage that is first offered no later than December 31, 2017, and that ends on the later of: (1) the date that is three years after the date wraparound coverage is first offered, or (2) the date on which the last collective bargaining agreement relating to the plan terminates after the date the wraparound coverage is first offered.

Both options are designed so that wraparound coverage could not replace employer-sponsored primary group coverage. Under the individual coverage option, the employer also must offer other group health coverage that is not limited to excepted benefits and provides minimum value to the class of participants offered the wraparound coverage by reason of their employment. Only individuals who are not full-time workers and who are eligible for other group health plan coverage may be eligible for the wraparound coverage. Also, the employer coverage must substantially satisfy the employer responsibility provisions of section 4980H(a) of the Code (whether applicable or not), and the coverage would have to be affordable for at least 95% of full-time employees.

Under the Multi-State Plan option, the employer would have to offer coverage in the plan year beginning in 2014 that would have substantially satisfied the employer responsibility provisions of section 4980H(a) of the Code if the provision had been applicable, provided minimum value, and been affordable for a substantial portion of its full-time employees.[39] The employer's annual contributions for both its primary and wraparound coverage must be substantial (*e.g.,* at least 80% or 90% of the employer's total contributions for coverage offered to full-time employees in 2014).

Another factor in assessing the proposal's cost is that the decision to offer the limited wraparound coverage is optional. There is greater administrative complexity associated with the wraparound coverage than primary coverage alone or primary coverage plus a health FSA which offers similar benefits. Given a choice, some plan sponsors may choose to increase the affordability of their primary coverage rather than offer limited wraparound coverage. Some plan sponsors may not have that choice: the employers may not be in a financial position to make their primary health plans affordable to more workers, let alone contribute to wraparound coverage. Employers may also continue to simply not provide

[36] As with other group health coverage, employer contributions to the limited wraparound coverage would be excluded from employee income for tax purposes. Similar to the cost of the proposal, the budget implications of adding limited wraparound coverage as a form of excepted benefits depends on the number of employers that elect either option and the number of employees that in turn receive it.

[37] As described earlier in this preamble, ''eligible individual health insurance'' is individual health insurance coverage is not a grandfathered health plan, not a transitional individual health insurance market plan, and does not consist solely of excepted benefits.

[38] For example, the wraparound coverage may provide coverage for expanded in-network medical clinics or providers, or provide benefits that are not essential health benefits that are not covered under the Multi-State Plan.

[39] The substantial level was proposed to help minimize the implications for the primary plan's risk pool by preventing a large number of low-wage workers from leaving the primary plan for Marketplace coverage.

employees with affordable, minimum value coverage, allowing their workers to purchase coverage and potentially qualify for premium tax credits in the Marketplace with no additional wraparound benefit, and these employers would continue to pay any shared responsibility payments as applicable, resulting in no additional cost to the employer or the Federal government.

This proposed regulation would not encumber any currently existing means by which employers can provide comprehensive health insurance coverage to their employees in compliance with the Affordable Care Act. Rather, it would clarify two additional, alternative means of doing so. In light of this, the Departments invite comment on to what degree, if any, might this regulation increase employers' propensity to provide health insurance. Existing rules against discrimination in favor of highly compensated employees would limit employer's decisions. The Departments invite comment on to what extent, if any, this proposed regulation could affect plan sponsors' decision making. Employers' (and their employees') economic incentive, if any, to pursue a program of wrap coverage will depend importantly on the demographics of each employer's work force—that is, the distribution of their employees by part-time, seasonal, and temporary employment status, and by pay and income. In light of this, the Departments invite comment on whether there are particular sectors of the economy in which employers will be more or less inclined to pursue wraparound coverage programs.

The Departments seek comment on the other effects of the proposal. Specifically, the Departments request detailed data that would inform the following questions: What will be the impact of limiting the cost of the wraparound coverage to $2,500 per employee (and any covered dependents)? How many employers offer coverage that provides minimum value and is affordable for a substantial portion (under the first option) or 95 percent (under the second option) of employees who are eligible for coverage? To what extent would premiums for comprehensive health coverage change in the presence and absence of this rule?

C. Paperwork Reduction Act—Department of Labor and Department of the Treasury

The proposed rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*), because it does not contain a collection of information as defined in 44 U.S.C. 3502(3).

D. Paperwork Reduction Act—Department of HHS

The proposed rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*), because it does not contain a collection of information as defined in 44 U.S.C. 3502(3). An analysis under the PRA will be conducted for any guidance establishing a collection of information related to the rule.

E. Regulatory Flexibility Act—Departments of Labor and HHS

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of the RFA, the Departments continue to consider a ''small entity'' to be an employee benefit plan with fewer than 100 participants. The basis for this definition is found in section 104(a)(2) of the act, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, the Departments believe that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). The Departments therefore request comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

Because the proposed rule would impose no additional costs on employers or plans, the Departments believe that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to section 605(b) of the RFA, the Departments hereby certify that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

F. Special Analyses—Department of the Treasury

For purposes of the Department of the Treasury it has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations, and, because these proposed regulations do not impose a collection of information on small entities, an analysis under the RFA is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Small Business Administration for comment on its impact on small business.

G. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, these proposed rules do not include any federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million adjusted for inflation since 1995.

H. Federalism

Executive Order 13132 outlines fundamental principles of federalism. It requires adherence to specific criteria by federal agencies in formulating and implementing policies that have

''substantial direct effects'' on the states, the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the final regulation.

In the Departments' view, the proposed regulations, by clarifying policy regarding certain expected benefits options that can be designed by employers to support their employees, would provide more certainty to employers and others in the regulated community as well as states and political subdivisions regarding the treatment of such arrangements under ERISA. Accordingly, the Departments will affirmatively engage in outreach with officials of state and political subdivisions regarding the proposed rule and seek their input on the proposed rules and any federalism implications that they believe may be presented by it.

I. Congressional Review Act

This proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), which specifies that, before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller General for review.

IV. Statutory Authority

The Department of the Treasury regulations are proposed to be adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are proposed to be adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3765; Public Law 110–460, 122 Stat. 5123; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

The Department of Health and Human Services regulations are proposed to be adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

Signed this 17th day of December, 2014.

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Signed this 18th day of December 2014.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: December 17, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: December 17, 2014.

Sylvia Burwell,

Secretary, Department of Health and Human Services.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Chapter I

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

■ **Paragraph 1.** The authority citation for part 54 continues to read in part as follows:

Authority: Authority: 26 U.S.C. 7805.

* * *

Section 54.9831–1 also issued under 26 U.S.C. 9833.

■ **Paragraph 2.** Section 54.9831–1 is amended by adding paragraph (c)(3)(vii) to read as follows:

§ 54.9831–1 Special rules relating to group health plans.

* * * * *

(c) * * *

(3) * * *

(vii) *Limited wraparound coverage.* Limited benefits provided through a group health plan that wrap around either ''eligible individual health insurance'' or coverage under a Multi-State Plan (limited wraparound coverage) are excepted benefits if all of the following conditions are satisfied. For this purpose, ''eligible individual health insurance'' is individual health insurance coverage that is not a grandfathered health plan (as described in section 1251 of the Patient Protection and Affordable Care Act and § 54.9815–1251), not a transitional individual health insurance market plan (as described in the March 5, 2014 Insurance Standards Bulletin Series—Extension of Transitional Policy through October 1, 2016), and does not consist solely of excepted benefits (as defined in paragraph (c) of this section).

(A) *Covers additional benefits.* The limited wraparound coverage provides meaningful benefits beyond coverage of cost sharing under either the eligible individual health insurance or Multi-State Plan coverage. The wraparound coverage must not provide benefits only under a coordination-of-benefits provision and must not merely be an account-based reimbursement arrangement.

(B) *Limited in amount.* The annual cost of coverage per employee (and any covered dependents) under the limited wraparound coverage does not exceed the maximum annual salary reduction contributions toward health flexible spending arrangements, which is $2,500 for 2014, indexed in the manner prescribed under section 125(i)(2). For this purpose, the cost of coverage includes both employer and employee contributions towards coverage and is determined in the same manner as the applicable premium is calculated under a COBRA continuation provision.

(C) *Nondiscrimination.* All of the conditions of this paragraph (c)(3)(vii)(C) are satisfied.

(*1*) *No preexisting condition exclusion.* The limited wraparound coverage does not impose any preexisting condition exclusion, consistent with the requirements of section 2704 of the PHS Act (incorporated by reference into section 9815) and 29 CFR 2590.715–2704.

(*2*) *No discrimination based on health status.* The limited wraparound coverage does not discriminate against individuals in eligibility, benefits, or premiums based on any health factor of an individual (or any dependent of the individual), consistent with the requirements of section 9802 and § 54.9802–1, and section 2705 of the PHS Act (incorporated by reference into section 9815) and § 54.9815–2705.

(*3*) *No discrimination in favor of highly compensated individuals.* Neither the limited wraparound coverage, nor any other group health

plan coverage offered by the plan sponsor, fails to comply with section 2716 of the PHS Act (incorporated by reference into section 9815) or fails to be excludible from income for any individual due to the application of section 105(h) (as applicable).

(D) *Plan eligibility requirements.* Individuals eligible for the wraparound coverage are not enrolled in excepted benefit coverage under paragraph (c)(3)(v) of this section (relating to health FSAs). In addition, the conditions set forth in either paragraph (c)(3)(vii)(D)(*1*) or (*2*) of this section are met.

(*1*) *Limited wraparound coverage offered in conjunction with individual insurance for persons who are not full-time employees.* Wraparound benefits offered in conjunction with eligible individual health insurance satisfies all of the following requirements—

(*i*) For each year for which wraparound coverage is offered, the employer that is the sponsor of the plan offering wraparound coverage, or the employer participating in a plan offering wraparound coverage, offers to its full-time employees coverage that is substantially similar to coverage that the employer would need to offer to its full-time employees in order not to be subject to a potential assessable payment under the employer shared responsibility provisions of section 4980H(a), if such provisions were applicable; provides minimum value (as defined in section 36B(c)(2)(C)(ii)); and is reasonably expected to be affordable (applying the safe harbor rules for determining affordability set forth in 54.4980H–5(e)(2)). If a plan or issuer providing limited wraparound coverage takes reasonable steps to ensure that employers disclose to the plan or issuer necessary information regarding their coverage offered and affordability information, the plan or issuer is permitted to rely on reasonable representations by employers regarding this information, unless the plan or issuer has specific knowledge to the contrary.

(*ii*) Eligibility for the wraparound coverage is limited to employees who are not full-time employees (and their dependents), or who are retirees (and their dependents). For this purpose, full-time employees are employees who are reasonably expected to work at least an average of 30 hours per week.

(*iii*) Other group health plan coverage, not limited to excepted benefits, is offered to the individuals eligible for the wraparound coverage. Only individuals eligible for the other group health plan coverage are eligible for the wraparound coverage.

(*2*) *Limited wraparound coverage offered in conjunction with Multi-State Plan coverage.* Limited wraparound coverage offered in conjunction with Multi-State Plan coverage satisfies all of the conditions of this paragraph (c)(3)(vii)(D)(*2*). For this purpose, the term ''full-time employee'' means a ''full-time employee'' as defined in § 54.4980H–1(a)(21) who is not in a limited non-assessment period for certain employees (as defined in § 54.4980H–1(a)(26)). Moreover, if a plan or issuer providing limited wraparound coverage takes reasonable steps to ensure that employers disclose to the plan or issuer necessary information regarding their coverage offered and contribution levels for 2014 and for any year in which limited wraparound coverage is offered, the plan or issuer is permitted to rely on reasonable representations by employers regarding this information, unless the plan or issuer has specific knowledge to the contrary. Consistent with the reporting and evaluation criteria of paragraph (c)(3)(vii)(E) of this section, the Office of Personnel Management may verify that plans and issuers have reasonable mechanisms in place to ensure that contributing employers meet these standards.

(*i*) The limited wraparound coverage is specifically designed, and approved by the Office of Personnel Management, consistent with the reporting and evaluation criteria of paragraph (c)(3)(vii)(E) of this section, to provide benefits in conjunction with coverage under a Multi-State Plan authorized under section 1334 of the Patient Protection and Affordable Care Act. The Office of Personnel Management may revoke approval if it determines that continued approval is inconsistent with the reporting and evaluation criteria of paragraph (c)(3)(vii)(E) of this section.

(*ii*) The employer has offered coverage in the plan year that begins in 2014 that is substantially similar to coverage that the employer would need to have offered to its full-time employees in order to not be subject to an assessable payment under the employer shared responsibility provisions of section 4980H(a), if such provisions had been applicable.

(*iii*) In the plan year that begins in 2014, the employer has offered coverage to a substantial portion of full-time employees that provided minimum value (as defined in section 36B(c)(2)(C)(ii)) and was affordable (applying the safe harbor rules for determining affordability set forth in § 54.4980H–5(e)(2)).

(*iv*) For the duration of the pilot program, as described in paragraph (c)(3)(vii)(F) of this section, the employer's annual aggregate contributions for both primary and wraparound coverage are substantially the same as the employer's total contributions for coverage offered to full-time employees in 2014.

(E) *Reporting*—(*1*) *Reporting by group health plans and group health insurance issuers.* A self-insured plan, or a health insurance issuer, offering or proposing to offer Multi-State Plan wraparound coverage pursuant to paragraph (c)(3)(vii)(D)(*2*) of this section reports to the Office of Personnel Management (OPM), in a form and manner specified in guidance, information OPM reasonably requires to determine whether the plan or issuer qualifies to offer such coverage or complies with the applicable requirements of this section.

(*2*) *Reporting by group health plan sponsors.* The plan sponsor of a group health plan offering wraparound coverage under paragraph (c)(3)(vii) of this section, must report to the Department of Health and Human Services (HHS), in a form and manner specified in guidance, information HHS reasonably requires.

(F) *Pilot program with sunset*—The provisions of paragraph (c)(3)(vii) of this section apply to limited wraparound coverage that is first offered no later than December 31, 2017 and that ends on the later of:

(*1*) The date that is three years after the date wraparound coverage is first offered; or

(*2*) The date on which the last collective bargaining agreement relating to the plan terminates after the date wraparound coverage is first offered (determined without regard to any extension agreed to after the date wraparound coverage is first offered).

* * * * *

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2590 as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority citation for Part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185c, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub.

L.104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3765; Pub. L. 110–460, 122 Stat. 5123; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

■ 2. Section 2590.732 is amended by adding paragraph (c)(3)(vii) to read as follows:

§ 2590.732 Special rules relating to group health plans.

* * * * *

(c) * * *

(3) * * *

(vii) *Limited wraparound coverage.* Limited benefits provided through a group health plan that wrap around either ''eligible individual health insurance'' or coverage under a Multi-State Plan (limited wraparound coverage) are excepted benefits if all of the following conditions are satisfied. For this purpose, ''eligible individual health insurance'' is individual health insurance coverage that is not a grandfathered health plan (as described in section 1251 of the Patient Protection and Affordable Care Act and § 2590.715–1251), not a transitional individual health insurance market plan (as described in the March 5, 2014 Insurance Standards Bulletin Series—Extension of Transitional Policy through October 1, 2016), and does not consist solely of excepted benefits (as defined in paragraph (c) of this section).

(A) *Covers additional benefits.* The limited wraparound coverage provides meaningful benefits beyond coverage of cost sharing under either the eligible individual health insurance or Multi-State Plan coverage. The wraparound coverage must not provide benefits only under a coordination-of-benefits provision and must not merely be an account-based reimbursement arrangement.

(B) *Limited in amount.* The annual cost of coverage per employee (and any covered dependents) under the limited wraparound coverage does not exceed the maximum annual salary reduction contributions toward health flexible spending arrangements, which is $2,500 for 2014, indexed in the manner prescribed under section 125(i)(2) of the Code. For this purpose, the cost of coverage includes both employer and employee contributions towards coverage and is determined in the same manner as the applicable premium is calculated under a COBRA continuation provision.

(C) *Nondiscrimination.* All of the conditions of this paragraph (c)(3)(vii)(C) are satisfied.

(*1*) *No preexisting condition exclusion.* The limited wraparound coverage does not impose any preexisting condition exclusion, consistent with the requirements of section 2704 of the PHS Act (incorporated by reference into section 715 of ERISA) and § 2590.715–2704.

(*2*) *No discrimination based on health status.* The limited wraparound coverage does not discriminate against individuals in eligibility, benefits, or premiums based on any health factor of an individual (or any dependent of the individual), consistent with the requirements of section 702 of ERISA and § 2590.715–702, and section 2705 of the PHS Act (incorporated by reference into section 715 of ERISA) and § 2590.715–2705.

(*3*) *No discrimination in favor of highly compensated individuals.* Neither the limited wraparound coverage, nor any other group health plan coverage offered by the plan sponsor, fails to comply with section 2716 of the PHS Act (incorporated by reference into section 715 of ERISA) or fails to be excludible from income for any individual due to the application of section 105(h) of the Code (as applicable).

(D) *Plan eligibility requirements.* Individuals eligible for the wraparound coverage are not enrolled in excepted benefit coverage under paragraph (c)(3)(v) of this section (relating to health FSAs). In addition, the conditions set forth in either paragraph (c)(3)(vii)(D)(*1*) or (*2*) of this section are met.

(*1*) *Limited wraparound coverage offered in conjunction with individual insurance for persons who are not full-time employees.* Wraparound benefits offered in conjunction with eligible individual health insurance satisfies all of the following requirements—

(*i*) For each year for which wraparound coverage is offered, the employer that is the sponsor of the plan offering wraparound coverage, or the employer participating in a plan offering wraparound coverage, offers to its full-time employees coverage that is substantially similar to coverage that the employer would need to offer to its full-time employees in order not to be subject to a potential assessable payment under the employer shared responsibility provisions of section 4980H(a) of the Code, if such provisions were applicable; provides minimum value (as defined in section 36B(c)(2)(C)(ii) of the Code); and is reasonably expected to be affordable (applying the safe harbor rules for determining affordability set forth in 26 CFR 54.4980H–5(e)(2)). If a plan or issuer providing limited wraparound coverage takes reasonable steps to ensure that employers disclose to the plan or issuer necessary information regarding their coverage offered and affordability information, the plan or issuer is permitted to rely on reasonable representations by employers regarding this information, unless the plan or issuer has specific knowledge to the contrary.

(*ii*) Eligibility for the wraparound coverage is limited to employees who are not full-time employees (and their dependents), or who are retirees (and their dependents). For this purpose, full-time employees are employees who are reasonably expected to work at least an average of 30 hours per week.

(*iii*) Other group health plan coverage, not limited to excepted benefits, is offered to the individuals eligible for the wraparound coverage. Only individuals eligible for the other group health plan coverage are eligible for the wraparound coverage.

(*2*) *Limited wraparound coverage offered in conjunction with Multi-State Plan coverage.* Limited wraparound coverage offered in conjunction with Multi-State Plan coverage satisfies all of the conditions of this paragraph (c)(3)(vii)(D)(*2*). For this purpose, the term ''full-time employee'' means a ''full-time employee'' as defined in 26 CFR 54.4980H–1(a)(21) who is not in a limited non-assessment period for certain employees (as defined in 26 CFR 54.4980H–1(a)(26)). Moreover, if a plan or issuer providing limited wraparound coverage takes reasonable steps to ensure that employers disclose to the plan or issuer necessary information regarding their coverage offered and contribution levels for 2014 and for any year in which limited wraparound coverage is offered, the plan or issuer is permitted to rely on reasonable representations by employers regarding this information, unless the plan or issuer has specific knowledge to the contrary. Consistent with the reporting and evaluation criteria of paragraph (c)(3)(vii)(E) of this section, the Office of Personnel Management may verify that plans and issuers have reasonable mechanisms in place to ensure that contributing employers meet these standards.

(*i*) The limited wraparound coverage is specifically designed, and approved by the Office of Personnel Management, consistent with the reporting and evaluation criteria of paragraph (c)(3)(vii)(E) of this section, to provide benefits in conjunction with coverage under a Multi-State Plan authorized under section 1334 of the Patient Protection and Affordable Care Act. The Office of Personnel Management may revoke approval if it determines that

continued approval is inconsistent with the reporting and evaluation criteria of paragraph (c)(3)(vii)(E) of this section.

(*ii*) The employer has offered coverage in the plan year that begins in 2014 that is substantially similar to coverage that the employer would need to have offered to its full-time employees in order to not be subject to an assessable payment under the employer shared responsibility provisions of section 4980H(a) of the Code, if such provisions had been applicable.

(*iii*) In the plan year that begins in 2014, the employer has offered coverage to a substantial portion of full-time employees that provided minimum value (as defined in section 36B(c)(2)(C)(ii) of the Code) and was affordable (applying the safe harbor rules for determining affordability set forth in 26 CFR 54.4980H–5(e)(2)).

(*iv*) For the duration of the pilot program, as described in paragraph (c)(3)(vii)(F) of this section, the employer's annual aggregate contributions for both primary and wraparound coverage are substantially the same as the employer's total contributions for coverage offered to full-time employees in 2014.

(E) *Reporting*—(*1*) *Reporting by group health plans and group health insurance issuers.* A self-insured plan, or a health insurance issuer, offering or proposing to offer Multi-State Plan wraparound coverage pursuant to paragraph (c)(3)(vii)(D)(*2*) of this section reports to the Office of Personnel Management (OPM), in a form and manner specified in guidance, information OPM reasonably requires to determine whether the plan or issuer qualifies to offer such coverage or complies with the applicable requirements of this section.

(*2*) *Reporting by group health plan sponsors.* The plan sponsor of a group health plan offering wraparound coverage under paragraph (c)(3)(vii) of this section, must report to the Department of Health and Human Services (HHS), in a form and manner specified in guidance, information HHS reasonably requires.

(F) *Pilot program with sunset*—The provisions of paragraph (c)(3)(vii) of this section apply to limited wraparound coverage that is first offered no later than December 31, 2017 and that ends on the later of:

(*1*) The date that is three years after the date wraparound coverage is first offered; or

(*2*) The date on which the last collective bargaining agreement relating to the plan terminates after the date wraparound coverage is first offered (determined without regard to any extension agreed to after the date wraparound coverage is first offered).

* * * * *

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Subtitle A

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 146 as follows:

PART 146 —REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 1. The authority citation for Part 146 continues to read as follows:

Authority: Secs. 2702 through 2705, 2711 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92).

■ 2. Section 146.145 is amended by adding paragraph (b)(3)(vii) to read as follows:

§ 146.145 Special rules relating to group health plans.

* * * * *

(b) * * *

(3) * * *

(vii) *Limited wraparound coverage.* Limited benefits provided through a group health plan that wrap around either ''eligible individual health insurance'' or coverage under a Multi-State Plan (limited wraparound coverage) are excepted benefits if all of the following conditions are satisfied. For this purpose, ''eligible individual health insurance'' is individual health insurance coverage that is not a grandfathered health plan (as described in section 1251 of the Patient Protection and Affordable Care Act and § 147.140 of this subchapter), not a transitional individual health insurance market plan (as described in the March 5, 2014 Insurance Standards Bulletin Series—Extension of Transitional Policy through October 1, 2016), and does not consist solely of excepted benefits (as defined in paragraph (b) of this section).

(A) *Covers additional benefits.* The limited wraparound coverage provides meaningful benefits beyond coverage of cost sharing under either the eligible individual health insurance or Multi-State Plan coverage. The wraparound coverage must not provide benefits only under a coordination-of-benefits provision and must not merely be an account-based reimbursement arrangement.

(B) *Limited in amount.* The annual cost of coverage per employee (and any covered dependents) under the limited wraparound coverage does not exceed the maximum annual salary reduction contributions toward health flexible spending arrangements, which is $2,500 for 2014, indexed in the manner prescribed under section 125(i)(2) of the Code. For this purpose, the cost of coverage includes both employer and employee contributions towards coverage and is determined in the same manner as the applicable premium is calculated under a COBRA continuation provision.

(C) *Nondiscrimination.* All of the conditions of this paragraph (b)(3)(vii)(C) are satisfied.

(*1*) *No preexisting condition exclusion.* The limited wraparound coverage does not impose any preexisting condition exclusion, consistent with the requirements of section 2704 of the PHS Act and § 147.108 of this subchapter.

(*2*) *No discrimination based on health status.* The limited wraparound coverage does not discriminate against individuals in eligibility, benefits, or premiums based on any health factor of an individual (or any dependent of the individual), consistent with the requirements section 2705 of the PHS Act and § 146.121.

(*3*) *No discrimination in favor of highly compensated individuals.* Neither the limited wraparound coverage, nor any other group health plan coverage offered by the plan sponsor, fails to comply with section 2716 of the PHS Act or fails to be excludible from income for any individual due to the application of section 105(h) of the Code (as applicable).

(D) *Plan eligibility requirements.* Individuals eligible for the wraparound coverage are not enrolled in excepted benefit coverage under paragraph (b)(3)(v) of this section (relating to health FSAs). In addition, the conditions set forth in either paragraph (b)(3)(vii)(D)(*1*) or (*2*) of this section are met.

(*1*) *Limited wraparound coverage offered in conjunction with individual insurance for persons who are not full-time employees.* Wraparound benefits offered in conjunction with eligible individual health insurance satisfies all of the following requirements—

(*i*) For each year for which wraparound coverage is offered, the employer that is the sponsor of the plan offering wraparound coverage, or the employer participating in a plan offering wraparound coverage, offers to its full-time employees coverage that is substantially similar to coverage that the employer would need to offer to its full-time employees in order not to be subject to a potential assessable

payment under the employer shared responsibility provisions of section 4980H(a) of the Code, if such provisions were applicable; provides minimum value (as defined in section 36B(c)(2)(C)(ii) of the Code); and is reasonably expected to be affordable (applying the safe harbor rules for determining affordability set forth in 26 CFR 54.4980H–5(e)(2)). If a plan or issuer providing limited wraparound coverage takes reasonable steps to ensure that employers disclose to the plan or issuer necessary information regarding their coverage offered and affordability information, the plan or issuer is permitted to rely on reasonable representations by employers regarding this information, unless the plan or issuer has specific knowledge to the contrary.

(*ii*) Eligibility for the wraparound coverage is limited to employees who are not full-time employees (and their dependents), or who are retirees (and their dependents). For this purpose, full-time employees are employees who are reasonably expected to work at least an average of 30 hours per week.

(*iii*) Other group health plan coverage, not limited to excepted benefits, is offered to the individuals eligible for the wraparound coverage. Only individuals eligible for the other group health plan coverage are eligible for the wraparound coverage.

(*2*) *Limited wraparound coverage offered in conjunction with Multi-State Plan coverage.* Limited wraparound coverage offered in conjunction with Multi-State Plan coverage satisfies all of the conditions of this paragraph (b)(3)(vii)(D)(*2*). For this purpose, the term ''full-time employee'' means a ''full-time employee'' as defined in 26 CFR 54.4980H–1(a)(21) who is not in a limited non-assessment period for certain employees (as defined in 26 CFR 54.4980H–1(a)(26)). Moreover, if a plan or issuer providing limited wraparound coverage takes reasonable steps to ensure that employers disclose to the plan or issuer necessary information regarding their coverage offered and contribution levels for 2014 and for any year in which limited wraparound coverage is offered, the plan or issuer is permitted to rely on reasonable representations by employers regarding this information, unless the plan or issuer has specific knowledge to the contrary. Consistent with the reporting and evaluation criteria of paragraph (b)(3)(vii)(E) of this section, the Office of Personnel Management may verify that plans and issuers have reasonable mechanisms in place to ensure that contributing employers meet these standards.

(*i*) The limited wraparound coverage is specifically designed, and approved by the Office of Personnel Management, consistent with the reporting and evaluation criteria of paragraph (b)(3)(vii)(E) of this section, to provide benefits in conjunction with coverage under a Multi-State Plan authorized under section 1334 of the Patient Protection and Affordable Care Act. The Office of Personnel Management may revoke approval if it determines that continued approval is inconsistent with the reporting and evaluation criteria of paragraph (b)(3)(vii)(E) of this section.

(*ii*) The employer has offered coverage in the plan year that begins in 2014 that is substantially similar to coverage that the employer would need to have offered to its full-time employees in order to not be subject to an assessable payment under the employer shared responsibility provisions of section 4980H(a) of the Code, if such provisions had been applicable.

(*iii*) In the plan year that begins in 2014, the employer has offered coverage to a substantial portion of full-time employees that provided minimum value (as defined in section 36B(c)(2)(C)(ii) of the Code) and was affordable (applying the safe harbor rules for determining affordability set forth in 26 CFR 54.4980H–5(e)(2)).

(*iv*) For the duration of the pilot program, as described in paragraph (b)(3)(vii)(F) of this section, the employer's annual aggregate contributions for both primary and wraparound coverage are substantially the same as the employer's total contributions for coverage offered to full-time employees in 2014.

(E) *Reporting*—(*1*) *Reporting by group health plans and group health insurance issuers.* A self-insured plan, or a health insurance issuer, offering or proposing to offer Multi-State Plan wraparound coverage pursuant to paragraph (b)(3)(vii)(D)(*2*) of this section reports to the Office of Personnel Management (OPM), in a form and manner specified in guidance, information OPM reasonably requires to determine whether the plan or issuer qualifies to offer such coverage or complies with the applicable requirements of this section.

(*2*) *Reporting by group health plan sponsors.* The plan sponsor of a group health plan offering wraparound coverage under paragraph (b)(3)(vii) of this section, must report to the Department of Health and Human Services (HHS), in a form and manner specified in guidance, information HHS reasonably requires to determine whether the exception for limited wraparound coverage under this paragraph (b)(3)(vii) is allowing plan sponsors to provide workers with comparable benefits whether enrolled in minimum essential coverage under a group health plan offered by the plan sponsor, or a qualified health plan with additional limited wraparound coverage offered by the plan sponsor, without the causing an erosion of coverage.

(F) *Pilot program with sunset*—The provisions of paragraph (b)(3)(vii) of this section apply to limited wraparound coverage that is first offered no later than December 31, 2017 and that ends on the later of:

(*1*) The date that is three years after the date wraparound coverage is first offered; or

(*2*) The date on which the last collective bargaining agreement relating to the plan terminates after the date wraparound coverage is first offered (determined without regard to any extension agreed to after the date wraparound coverage is first offered).

* * * * *

[FR Doc. 2014–30010 Filed 12–19–14; 11:15 am]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket Nos. 07–250, 10–254: DA 14–1688]

Request for Updated Information and Comment on Wireless Hearing Aid Compatibility Regulations

ACTION: Proposed rule.

SUMMARY: In this document, the Wireless Telecommunications Bureau and the Consumer and Governmental Affairs Bureau seek updated input to better understand the current consumer experience, to explore technical or other barriers to the provision of hearing aid compatible devices on new wireless technologies, and to consider changes to its rules that may be necessary to ensure that wireless handsets used with advanced communications services are accessible in light of directives contained in the Twenty-First Century Communications and Video Accessibility Act (CVAA).

DATES: Effective 30 days from publication in the **Federal Register**. Reply Comments 45 days from publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Eli Johnson, Wireless Telecommunications Bureau, (202) 418–1395, email *Eli.Johnson@fcc.gov.* Bob Aldrich, Consumer and Governmental Affairs

Bureau, (202) 418–0996, email *Robert.Aldrich@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, WT Docket Nos. 07–250, 10–254, released November 21, 2014. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the Public Notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 07–250; 10–254. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

I. Introduction

1. By this Public Notice, the Wireless Telecommunications Bureau (Wireless Bureau) and the Consumer and Governmental Affairs Bureau (CGB) request updated information to assess whether the Commission's hearing aid compatibility rules for wireless handsets effectively meet the needs of individuals who are deaf and hard of hearing. Since the Wireless Bureau last developed the record on these issues in 2012, a number of developments have occurred, including the deployment of LTE networks and LTE only handsets, wider use of and reliance on Wi-Fi calling, increasing consumer demand for data-centric mobile services on wireless devices, and continued growth in the number of wireless-only households.

2. The Wireless Bureau and CGB therefore seek updated information to better understand the current consumer experience, to explore technical or other barriers to the provision of hearing aid compatible devices on new wireless technologies, and to consider recommending changes to the Commission's rules that may be necessary to ensure that wireless handsets used with advanced communications services are accessible in light of directives contained in the Twenty-First Century Communications and Video Accessibility Act (CVAA) (CVAA, Pub. L. 111–260). The Commission seeks to refresh the record on two principal issues. First, should the Commission revise the hearing aid compatibility requirement to apply in a technologically neutral way to all mobile wireless devices that can be used for voice communications? Second, should the Commission consider moving away from the fractional compliance regime that exists today and implement a requirement that all mobile wireless devices must comply with the hearing aid compatibility rules?

II. Background

3. In 2003, the Commission adopted rules to ensure that all wireless handset manufacturers and service providers offer consumers a selection of handsets that are compatible with hearing aids. Under these rules, which were amended in 2008, manufacturers and wireless service providers are currently required to meet the Commission's wireless hearing aid compatibility standards only to the extent that handsets are associated with digital CMRS networks that ''offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.'' These rules require mobile service providers and handset manufacturers to offer only a certain number of digital wireless handset models that are hearing aid compatible through reductions in radio frequency (RF) interference and through an internal capacity for inductive coupling with a telecoil.

4. In the *2007 Hearing Aid Compatibility NPRM,* (22 FR 292, November 7, 2007) the Commission sought comment on whether to apply the hearing aid compatibility rules to wireless handsets that may fall outside the scope of covered CMRS, including handsets that offer voice services on non-cellular unlicensed Wi-Fi networks. In the *2010 Further NPRM,* (75 FR 77781, December 14, 2010) the Commission proposed to apply hearing aid compatibility requirements to ''all customer equipment used to provide wireless voice communications over any type of network among members of the public or a substantial portion of the public via a built-in speaker where the equipment is typically held to the ear, so long as meeting hearing aid compatibility standards is technologically feasible and would not increase costs to an extent that would preclude successful marketing.''

5. Subsequent to the release of the *2010 Further NPRM,* the CVAA amended the Hearing Aid Compatibility Act (HAC Act) (HAC Act, Pub. L. 100–394) in several relevant respects. First, the CVAA defined the class of equipment that is generally required to be hearing aid compatible to include, in addition to telephones, ''all customer premises equipment used with advanced communications services that is designed to provide 2-way voice communication via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone.'' The CVAA defines ''[a]dvanced communications services'' to include, among other things, interconnected and non-interconnected VoIP services. Second, the CVAA defines ''telephones'' for purposes of the public mobile and private radio services exemptions to include ''telephones and other customer premises equipment used in whole or in part with'' various wireless communications services, including unlicensed services that are functionally equivalent to licensed services. Third, Congress directed the Commission to reassess the appropriateness of existing exemptions using a four-part test. Finally, in implementing the hearing aid compatibility requirements applicable to customer premises equipment (CPE) used with advanced communications services, Congress directed the Commission to ''use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users.''

6. Shortly after passage of the CVAA, the Wireless Bureau released a Public Notice seeking comments on the effect that the new legislation might have, if any, on the hearing aid compatibility rules that had been proposed in the *2010 Further NPRM.* In December 2010, the Wireless Bureau issued a second Public Notice to initiate a comprehensive review of the wireless hearing aid compatibility regulations (*2010 Review PN),* (76 FR 2625, December 28, 2010) including reassessment of deployment benchmarks and consideration of whether all wireless handsets should be required to meet hearing aid compatibility standards. Subsequently, in November 2012, due to intervening market, technical, and regulatory developments since the *2010 Review PN,* the Wireless Bureau sought updated and additional comment on these matters (*2012 Refresh PN*), (77 FR 70407, November 26, 2012).

III. Request for Comment

A. Applying the Rules in a Technologically Neutral Manner

7. Section 20.19 of the Commission's rules currently imposes hearing aid

compatibility requirements based on the underlying network technology, not on a device's functionality. Consumers, however, may focus more on a particular handset's functionality than on the network technology that it utilizes. Additionally, a technologically neutral approach may encourage innovation in the design of hearing aid compatible mobile wireless devices. The Wireless Bureau and CGB renew the Commission's request for comment on whether to require compatibility in a technologically neutral manner.

8. To keep pace with consumer expectations and the evolution of wireless technologies, the Wireless Bureau and CGB seek comment on whether consumers are aware that the hearing aid compatibility rules currently apply only to digital CMRS services with certain functionalities and, relatedly, whether section 20.19 should apply to all wireless handsets, regardless of the service, frequency, or technology with which they are used. In other words, if a wireless handset includes a built-in speaker and is typically held to the ear in a manner functionally equivalent to a telephone, then should the hearing aid compatibility requirements apply? If the Commission were to take this course of action, how should it define ''functionally equivalent''? What would be the costs and benefits of revising section 20.19 along these lines—for handset manufacturers, service providers, hearing aid manufacturers, and consumers? The Wireless Bureau and CGB seek comment on whether this approach would be more consistent with consumer expectations, especially the expectations of persons with hearing loss, and if so, why.

9. The Wireless Bureau and CGB note that amended rules could cover, among other things, handsets that operate over Wi-Fi systems and private internal networks. In light of this potential scope, the Wireless Bureau and CGB seek comment on whether the Commission should consider applying the hearing aid compatibility rules to handsets and other CPE used for wireless voice communications regardless of whether they are interconnected with the public switched telephone network (PSTN). Similarly, should the rules apply to other packet-based modes of voice access such as Voice over LTE (VoLTE) that may not use an in-network switching facility? How would amending the hearing aid compatibility rules in this manner affect a consumer's ability to use his or her device in a variety of situations, such as for communicating in a moving vehicle (which requires access to multiple base stations), in a Wi-Fi hot-spot, or through a satellite? Additionally, should the Commission expand the hearing aid compatibility rules to include handsets and CPE used solely over internal networks?

10. The CVAA directs the Commission to consider technical feasibility, marketability, and the availability of new technologies in connection with its hearing aid compatibility rules. Thus, the Wireless Bureau and CGB seek comment on how difficult it would be for handsets that offer voice communication capability but may not presently be subject to section 20.19 to comply with a hearing aid compatibility technical standard, and whether devices used primarily or exclusively on internal networks pose unique technical challenges. Could manufacturers and service providers achieve compliance for these devices in a relatively short period of time? Are there technical impediments or other considerations of which the Commission should be aware? If there are technical impediments or other considerations, what are they and how long would it take for manufacturers and service providers to overcome them? How much lead time would manufacturers need in order to come into compliance and what would be the costs of complying?

11. Along these same lines, do testing laboratories have the equipment and software needed to test the compatibility of handsets that offer voice communication capability but may not be presently subject to section 20.19? Could laboratories upgrade existing equipment to test devices that operate on other interfaces, or would they need to purchase new equipment and software? What are the costs of updating existing equipment and software or purchasing new equipment and software?

12. Would technical impediments, testing costs, or other challenges support exempting certain technologies or services from the rules, either indefinitely or for a specified period? If so, what technologies or services would merit an exemption and why? What impact would exemptions have on people with hearing loss? What standard should the Commission utilize to determine if a technology or service should be exempted? Finally, how frequently should the Commission review such exemptions?

B. Fractional Deployment Benchmarks

13. In enacting the HAC Act, Congress found that individuals with hearing loss should have access to the telecommunications network ''to the fullest extent made possible by technology and medical science.'' Likewise, the CVAA directs the Commission to adopt rules that expand consumer access to hearing aid compatible handsets in line with advanced communication technologies. The Commission's existing hearing aid compatibility rules, however, require covered handset manufacturers and service providers to achieve compliance only for a percentage of the total number of handset models that they offer. These fractional deployment benchmarks have been in place for a number of years and they have remained static, despite significant progress among certain manufacturers in achieving compliance. Moreover, the Wireless Bureau and CGB note the increasing trend among consumers to reside in wireless only households and rely exclusively on wireless services for communications. In such households, wireless handsets may be the only way for consumers to contact essential services, such as 911 emergency services. Given the evolution in wireless technology and handset manufacturing, and evolving consumer expectations and use, the Wireless Bureau and CGB seek comment on whether the current fractional deployment approach effectively meets the communication needs of people with hearing loss.

14. The Wireless Bureau and CGB renew the Commission's request for comment on how consumers with hearing loss would benefit if all newly manufactured handsets were hearing aid compatible—*i.e.,* have ratings of M3 and T3 or better. For example, to what extent would this improve the ability of consumers to select phones that meet their communication needs and reduce consumer confusion when shopping at retail establishments? To the extent that consumers currently have difficulty finding handsets that work effectively with their hearing aids or implants, would this change meaningfully address the difficulty? Or, by contrast, are consumers able to find hearing aid compatible devices (*i.e.,* devices with ratings of M3 and T3 or better) without difficulty, but are discovering that many devices do not work effectively with hearing aids or implants notwithstanding compliance with the Commission's rules?

15. To what extent would requiring compliance for all handsets make it easier for consumers with hearing loss to purchase handsets not just from manufacturers and service providers but from distributors, third-party vendors, kiosks, and Web sites? The Wireless Bureau and CGB note that, in the past, consumers have requested an in-store

testing requirement for independent retailers. Would expanding the hearing aid compatibility requirement to all handsets render this request moot? Given the increasing number of wireless-only households, to what extent would this change improve access to emergency services for individuals with hearing loss? The Wireless Bureau and CGB seek comment on these issues and on other ways consumers with hearing loss could benefit if all future handsets were hearing aid compatible.

16. The Wireless Bureau and CGB also seek comment on challenges that may be associated with ensuring that all future handsets are compliant. Are there any technologies for which this would be technically infeasible? How much lead time would manufacturers need to achieve this, while ensuring the marketability and availability of their new technologies? Does the transition away from GSM and towards VoLTE remove some technological hurdles that slowed progress towards making all handsets hearing aid compatible? Commenters advocating maintaining the existing benchmarks should clearly explain why their position is consistent with the HAC Act and the CVAA, and also why this decision would not adversely impact persons who are deaf or hard of hearing. Are there some wireless technologies for which the Commission should grant exemptions from an all-inclusive rule, because of their nascent status or for other reasons? Commenters advocating specific exemptions should clearly state the basis for any exemption, its expected impact on the affected population, whether it should be temporary or permanent, and if temporary, whether and how frequently it should be reevaluated by the Commission.

17. Finally, the Wireless Bureau and CGB seek comment on the costs and benefits associated with requiring all handsets to be hearing aid compatible. In particular, would this change eliminate the need for a number of the compliance requirements associated with the present fractional approach, such as annual status reports on hearing aid compatibility, the product refresh rule, and the ''different levels of functionality'' rule? What would be the advantages and disadvantages of discontinuing these requirements for manufacturers, service providers and consumers? Are there other compliance requirements that could be discontinued? Would the potential reduction in compliance burdens provide a particular benefit or cost to discrete segments of the industry, such as smaller wireless providers? Would smaller providers benefit from the availability of a wider variety of the latest handset models? The Wireless Bureau and CGB note that some manufacturers now deploy hearing aid compatible handsets in a higher percentage than is required under the rules. What economies of scale and other benefits would accrue to manufacturers who design all of their handsets to be hearing aid compatible? The Wireless Bureau and CGB generally seek comment on other ways covered handset manufacturers and service providers could benefit if all wireless handsets were hearing aid compatible, as well as any obstacles to achieving this result.

IV. Procedural Matters

18. Interested parties may file comments within 30 days of the publication of this document in the **Federal Register** and reply comments within 45 days of the publication of this Public Notice in the **Federal Register.** All filings should refer to WT Docket Nos. 07–250 and 10–254. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/.* Filers should follow the instructions provided on the Web site for submitting comments. If multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet email. To get filing instructions for email comments, filers should send an email to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form your email address.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. 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.

19. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554.

20. One copy of each pleading must be delivered electronically, by email or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at *FCC@BCPIWEB.COM* or (202) 488–5563 (facsimile).

21. Copies of the document and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc. in person at 445 12th Street SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via email at *FCC@BCPIWEB.COM.* The Public Notice and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The Public Notice is also available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet Web site at *http://www.fcc.gov.*

22. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Chad Breckinridge,

Associate Bureau Chief, Wireless Telecommunications Bureau.

[FR Doc. 2014–30096 Filed 12–22–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE TREASURY

48 CFR Parts 1001, 1002, 1016, 1019, 1022, 1028, 1032, 1034, 1042, and 1052

Department of the Treasury Acquisition Regulation; Technical Amendments

AGENCY: Office of the Procurement Executive, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury is makes amendments to the Department of the Treasury Acquisition Regulation (DTAR) in order to make editorial changes. These editorial changes are in response to either updates made to the Federal Acquisition Regulations (FAR), Treasury bureau organizational restructuring, and other internal updates that have occurred since the 2013 edition.

DATES: *Comment due date:* January 22, 2015.

ADDRESSES: Treasury invites comments on the topics addressed in this proposed rule. Comments may be submitted to Treasury by any of the following methods: by submitting electronic comments through the federal government e-rulemaking portal, *www.regulations.gov,* by email to *thomas.olinn@treasury.gov;* or by sending paper comments to Department of the Treasury, Office of the Procurement Executive, Attn: Thomas O'Linn, 655 15th Street NW., Metropolitan Square, Room 6B415, Washington, DC 20220.

In general, Treasury will post all comments to *www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Room 1428, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Thomas O'Linn, Procurement Analyst, Office of the Procurement Executive, at (202) 622–2092.

SUPPLEMENTARY INFORMATION: The DTAR, which supplement the Federal Acquisition Regulation, are codified at 48 CFR Chapter 10. In order to update certain elements in 48 CFR part 10 this document makes editorial changes to the DTAR, which include updating Treasury bureau names and updating titles and dates, and other nonsubstantive revisions. This proposed rule would also remove the Earned Value Management System provisions codified at section 1052.234–72. There is no longer a need for Treasury-specific coverage in this area.

Regulatory Planning and Review

This rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866. Therefore a regulatory assessment is not required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) generally requires agencies to conduct an initial regulatory flexibility analysis and a final 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.

It is hereby certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rule is intended to make editorial changes to the DTAR.

Paperwork Reduction Act

The information collections contained in this proposed rule have been previously approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and assigned OMB control numbers 1505–0081; 1505–0080; and 1505–0107. Under 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 it displays a valid OMB control number.

List of Subjects in 48 CFR Chapter 10

Government procurement.

Accordingly, the Department of the Treasury proposes to amend 48 CFR chapter 10 as follows:

PART 1001—DEPARTMENT OF THE TREASURY ACQUISITION REGULATION (DTAR) SYSTEM

■ 1. The authority citation for part 1001 is revised to read as follows:

Authority: 41 U.S.C. 1707.

1001.670 [Amended]

■ 2. Amend section 1001.670 by removing from the paragraph the word ''Technical'' from Contracting Officer Technical Representative and the letter ''T'' in COTR in all instances used.

PART 1002—DEFINITIONS OF WORDS AND TERMS

■ 3. The authority citation for part 1002 is revised to read as follows:

Authority: 41 U.S.C. 1707.

■ 4. Section 1002.101 is revised to read as follows:

1002.101 Definitions.

Bureau means any one of the following Treasury organizations:

(1) Alcohol and Tobacco Tax and Trade Bureau (TTB);

(2) Bureau of Engraving & Printing (BEP);

(3) Bureau of the Fiscal Service (formerly Bureau of Public Debt and Financial Management Service);

(4) Departmental Offices (DO);

(5) Financial Crimes Enforcement Network (FinCEN);

(6) Office of the Inspector General (OIG);

(7) Internal Revenue Service (IRS);

(8) Office of the Comptroller of the Currency (OCC);

(9) Special Inspector General for the Troubled Asset Relief Program (SIGTARP);

(10) Treasury Inspector General for Tax Administration (TIGTA); or

(11) United States Mint.

1002.70 [Amended]

■ 5. Amend section 1002.70 by—

■ a. Removing *''COTR* Contracting Technical Officer's Representative'' and adding ''*COR* Contracting Officer's Representative'' in its place.

■ b. Removing *''IPP* Internet Payment Platform'' and adding ''*IPP* Invoice Processing Platform'' in its place.

PART 1016—TYPES OF CONTRACTS

■ 6. The authority citation for part 1016 is revised to read as follows:

Authority: 41 U.S.C. 1707.

1016.505 [Amended]

■ 7. Section 1016.505 is revised to read as follows:

1016.505 Ordering.

(b)(8) The HCA shall designate a task and delivery order ombudsman in accordance with bureau procedures and provide a copy of the designation to the agency task and delivery order ombudsman. Bureau task and delivery order ombudsmen shall review complaints from contractors concerning task and delivery orders placed by the contracting activity and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. In the absence of a designation, the Bureau advocate for competition will serve in that capacity.

PART 1019—SMALL BUSINESS PROGRAMS

■ 8. The authority citation for part 1019 is revised to read as follows:

Authority: 41 U.S.C. 1707.

■ 9. Amend section 1019.202–70 by—

■ a. Removing from paragraph (d)(1) the text ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' and adding ''System for Award Management Exclusions'' in its place;

■ b. Adding paragraph (n)(2)(vi).

■ c. Removing from paragraph (p)(1) the text ''$500,000 ($1,000,000 for construction)'' and adding ''$650,000 ($1,500,000 for construction)'' in its place; and

■ d. Revising paragraph (p)(2).

The addition and revision read as follows:

1019.202–70 The Treasury Mentor Protégé Program

* * * * *

(n) * * *

(2) * * *

(vi) Protégé firms shall submit a post completion report 24 months after exiting the Mentor-Protégé Program. The post completion report will assist the Department of the Treasury in assessing the progress of Protégé firms upon completion of the program.

* * * * *

(p) * * *

(2) Insert the clause at *1052.219–75*, Mentor Requirements and Evaluation, in solicitations and contracts where the contractor is a participant in the Treasury Mentor-Protégé Program.

1019.8 [Amended]

■ 10. Revise the heading for subpart 1019.8 to read as follows:

Subpart 1019.8—Contracting With the Small Business Administration (The 8(a) Program)

1019.811–3 [Amended]

■ 11. Amend section 1019.811–3 by—

■ a. Removing from paragraph (d)(3) the citation ''1019.8'' and adding ''FAR 19.8'' in its place; and

■ b. Removing from paragraph (f) the citation ''1019.8'' and adding ''FAR 19.8'' in its place.

PART 1022—MINORITY AND WOMEN INCLUSION

■ 12. The authority citation for part 1022 continues to read as follows:

Authority: 12 U.S.C. 5452.

PART 1028—BONDS AND INSURANCE

■ 13. The authority citation for part 1028 is revised to read as follows:

Authority: 41 U.S.C. 1707.

1028.307–1 [Amended]

■ 14. In section 1028.307–1, remove reserved paragraph (b).

■ 15. Revise section 1028.310–70 to read as follows:

1028.310–70 Agency contract clause for work on a Government installation.

(a) Insert a clause substantially similar to 1052.228–70, Insurance requirements, in all solicitations and contracts that contain the clause at FAR 52.228–5.

■ 16. Revise section 1028.311–2 to read as follows:

1028.311–2 Agency solicitation provisions and contract clauses.

Insert a clause substantially similar to 1052.228–70, Insurance requirements, in all solicitations and contracts that contain the clause at FAR 52.228–7.

PART 1032—CONTRACT FINANCING

■ 17. The authority citation for part 1032 is revised to read as follows:

Authority: 41 U.S.C. 1707.

1032.7002 [Amended]

■ 18. Amend section 1032.7002 by—

■ a. Removing from paragraph (a) introductory text the words ''awarded after October 1, 2012,'' and

■ b. Removing from paragraph (c) the words ''Treasury Internet Payment Platform'' and adding the words ''Treasury Invoice Processing Platform'' in their place.

■ 19. Section 1032.7003 is revised to read as follows:

1032.7003 Contract clause.

Except as provided in 1032.7002(a), use the clause at 1052.232–7003, Electronic Submission of Payment Requests, in all solicitations and contracts.

PART 1034—MAJOR SYSTEM ACQUISITION

■ 20. The authority citation for part 1034 is revised to read as follows:

Authority: 41 U.S.C. 1707.

■ 21. In section 1034.001, add introductory text and remove the definition of ''Core Earned Value Management''.

The addition reads as follows:

1034.001 Definitions.

As used in this part—

* * * * *

Subpart 34.2 [Removed]

■ 22. Remove subpart 34.2.

PART 1042—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 23. The authority citation for part 1042 is revised to read as follows:

Authority: 41 U.S.C. 1707.

1042.1500 [Removed and Reserved]

■ 24. Remove and reserve section 1042.1500.

PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 25. The authority citation for part 1052 is revised to read as follows:

Authority: 41 U.S.C. 1707.

■ 26. In section 1052.201–70, revise the introductory text and paragraphs (a), (b), (c) introductory text, (c)(6), (d), and (e) to read as follows:

1052.201–70 Contracting Officer's Representative (COR) appointment and authority.

As prescribed in *1001.670–6*, insert the following clause:

CONTRACTING OFFICER'S REPRESENTATIVE (COR) APPOINTMENT AND AUTHORITY (JAN 2015)

(a) The COR is ____ [insert name, address and telephone number].

(b) Performance of work under this contract is subject to the technical direction of the COR identified above, or a representative designated in writing. The term ''technical direction'' includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the contract specification(s)/work statement. The COR does not have authority to issue technical direction that:

* * * * *

(6) Directs, supervises or otherwise controls the actions of the Contractor's employees.

(d) Technical direction may be oral or in writing. The COR must confirm oral direction in writing within five workdays, with a copy to the Contracting Officer.

(e) The Contractor shall proceed promptly with performance resulting from the technical direction issued by the COR. If, in the opinion of the Contractor, any direction of the COR or the designated representative falls within the limitations of (c) above, the Contractor shall immediately notify the Contracting Officer no later than the beginning of the next Government work day.

* * * * *

■ 27. Revise section 1052.210–70 to read as follows:

1052.210–70 Contractor publicity.

As prescribed in 1009.204–70, insert the following clause:

CONTRACTOR PUBLICITY (JAN 2015)

The Contractor, or any entity or representative acting on behalf of the Contractor, shall not refer to the supplies or services furnished pursuant to the provisions of this contract in any news release or commercial advertising, or in connection with any news release or commercial advertising, without first obtaining explicit written consent to do so from the Contracting Officer. Should any reference to such supplies or services appear in any news release or commercial advertising issued by or on behalf of the Contractor without the required consent, the Government shall consider institution of all remedies available under applicable law, including 31 U.S.C. 333, and this contract. Further, any violation of this clause may be considered as part of the evaluation of past performance.

(End of clause)

■ 28. Revise the text of section 1052.228–70 to read as follows:

1052.228–70 Insurance requirements.

As prescribed in 1028.310–70 and 1028.311–2, insert a clause substantially as follows: The contracting officer may require additional kinds of insurance (*e.g.,* aircraft public and passenger liability, vessel liability) or higher limits of coverage.

INSURANCE (JAN 2015)

In accordance with FAR clause 52.228–5, entitled ''Insurance—Work on a Government Installation'' [or FAR clause 52.228–7 entitled, ''*Insurance—Liability to Third Persons*''], insurance of the following kinds and minimum amounts shall be provided and maintained during the period of performance of this contract:

(a) *Worker's compensation and employer's liability.* The Contractor shall, as a minimum, meet the requirements specified at FAR 28.307–2(a).

(b) *General liability.* The Contractor shall, at a minimum, meet the requirements specified at FAR 28.307–2(b).

(c) *Automobile liability.* The Contractor shall, at a minimum, meet the requirements specified at FAR 28.307–2(c).

(End of clause)

■ 29. Revise section 1052.232–7003 to read as follows:

1052.232–7003 Electronic submission of payment requests.

As prescribed in *1032.7003*, use the following clause:

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (JAN 2015)

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

(1) ''*Payment request*'' means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), ''Content of Invoices'' and the applicable Payment clause included in this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Invoice Processing Platform (IPP). Information regarding IPP, including IPP Customer Support contact information, is available at www.ipp.gov or any successor site.

(c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing in accordance with Treasury procedures.

(d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request.

(End of clause)

1052.234–2 [Removed]

■ 30. Remove section 1052.234–2.

1052.234–3 [Removed]

■ 31. Remove section 1052.234–3.

1052.234–4 [Removed]

■ 32. Remove section 1052.234–4.

1052.234–70 [Removed]

■ 33. Remove section 1052.234–70.

1052.234–71 [Removed]

■ 34. Remove section 1052.234–71.

1052.234–72 [Removed]

■ 35. Remove section 1052.234–72.

Iris B. Cooper,

Senior Procurement Executive, Office of the Procurement Executive.

[FR Doc. 2014–29767 Filed 12–22–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2014–0041; 4500030113]

RIN 1018–BA05

Endangered and Threatened Wildlife and Plants; Threatened Species Status for West Coast Distinct Population Segment of Fisher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, are extending the comment period for our October 7, 2014, proposed rule to list the West Coast distinct population segment (DPS) of fisher (*Pekania pennanti*) as a threatened species under the Endangered Species Act of 1973, as amended. This action ensures the public has an additional opportunity to comment on the proposal.

DATES: Submit your comments on the proposal on or before February 4, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES,** below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain a copy of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2014–0041, or by contacting the U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2014–0041, which is the docket number for the rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate the document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2014–0041, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://*

www.regulations.gov. This generally means that we will post any personal information you provide us (see the Information Requested section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Erin Williams, Field Supervisor, U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, CA 96097; telephone 530–842–5763; or facsimile 530–842–4517. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2014, we published a proposed rule (79 FR 60419) to list the West Coast DPS of fisher as a threatened species under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*).

At the November 17, 2014, public hearing in Redding, California, we received multiple requests to extend the 90-day public comment period on the proposed rule beyond the January 5, 2015, closing date. In order to provide all interested parties an additional opportunity to review and comment on our proposed rule, we are extending the comment period on the proposed rule for an additional 30 days, until February 4, 2015.

Information Requested

We intend that any final action resulting from the proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned Federal and State agencies, the scientific community, or any other interested party concerning the proposed listing rule. Please see the Information Requested section of the proposed listing rule (79 FR 60419, October 7, 2014) for a list of the comments and information that we particularly seek.

For more background on our proposed listing rule, see the October 7, 2014, **Federal Register** (79 FR 60419). The **ADDRESSES** section, above, provides information about how to obtain a copy of the proposed rule.

If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in our final rulemaking. Our final determination concerning the proposed rulemaking will take into consideration all written comments and any additional information we receive.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, may not meet the standard of information required by section 4(b)(1)(A) of the Act, which directs that determinations as to whether any species is an endangered or threatened species be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning the proposed listing rule by one of the methods listed in **ADDRESSES.** We request that you send comments only by the methods described in **ADDRESSES.**

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed listing rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Pacific Southwest Regional Office and the Yreka Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 15, 2014.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–29979 Filed 12–22–14; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 79, No. 246

Tuesday, December 23, 2014

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

December 17, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Child and Adult Care Food Program Sponsor and Provider Characteristics Study.

OMB Control Number: 0584–NEW.

Summary of Collection: The Child and Adult Care Food program 9CACFP) is a federal program that provides meals and snacks in child and adult day care facilities. The objective of the CACFP Sponsor and Provider Characteristics Study is to provide the United States Department of Agriculture's Food and Nutrition Service (FNS), the Congress, advocates, and other interested in the CACFP with information that accurately describes the Program's current child care sponsors and providers. Section 305 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA, Pub. L. 111–296) requires CACFP sponsors and providers to cooperate with USDA program research and evaluation studies.

Need and Use of the Information: This study will conduct a national survey of CACFP sponsors and providers that offers policy makers, advocates, and the general public with up-to-date information about: (1) Who is sponsoring child care providers; (2) The type of training and technical assistance sponsors receive from their State CACFP Administering Agency; (3) How often and what aspects of the program State monitor; (4) How sponsors operate and manage the Program to ensure its integrity, as well as compliance with Federal and State regulations; and (5) What types of providers sponsors serve.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 4,324.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 3,891.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–29981 Filed 12–22–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

Notice of Availability of the Final Supplemental Environmental Impact Statement for the Conservation Reserve Program

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

ACTION: Notice of Availability (NOA); request for comments.

SUMMARY: This notice announces that the Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), completed a Final Supplemental Programmatic Environmental Impact Statement (Final SPEIS) that examined the potential environmental consequences associated with implementing the changes to the Conservation Reserve Program (CRP) specified in the Agricultural Act of 2014 (2014 Farm Bill), and will assist in developing new regulations. FSA is requesting comments on the Final SPEIS.

DATES: We will consider comments that we receive by February, 15, 2015.

ADDRESSES: We invite you to submit comments on the Final SPEIS. In your comments, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow online instructions for submitting comments.
- E-Mail: *CRPComments@cardnotec.com.*
- Online: Go to the Web site at *http://crpspeis.com.* Follow online instructions for submitting comments.
- Fax: (757) 594–1469.
- Mail, hand delivery, or courier: CRP SPEIS, C/O Cardno, 501 Butler Farm Road, Suite H, Hampton, VA 23666.

A copy of the Final SPEIS is available through the FSA homepage: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd.*

FOR FURTHER INFORMATION CONTACT: Nell Fuller, (202) 720–6303. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact

the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act (NEPA, 42 U.S. C. 4321–4347) provides a means for the public to provide input on alternatives and environmental concerns for Federal programs or actions. The CRP Final SPEIS was completed as required by NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and FSA's NEPA regulations for compliance with NEPA (7 CFR part 799). FSA provided notice of its intent (NOI) to prepare the CRP SPEIS in the **Federal Register** on November 29, 2013 (78 FR 71561–71562), and solicited public comment on the preliminary alternatives for analyzing changes to CRP required by the 2014 Farm Bill. The Draft SPEIS public comment period began with a Notice of Availability (NOA) published in the **Federal Register** on July 15, 2014 (79 FR 41247–41249); some changes made to the SPEIS resulted from FSA analysis of those public comments.

In accordance with the 2014 Farm Bill, FSA plans to consolidate a number of conservation programs, which will have the effect of simplifying the programs, reducing overlapping goals, and reducing overall budgets. Moreover, many of the changes to CRP from the 2014 Farm Bill are administrative in nature, would not result in major changes to the current administration of CRP, or have been addressed in previous NEPA documentation concerning CRP. These changes do not require further analysis in the SPEIS. Those changes, and the justification for eliminating them from analysis, include the following, each of which is discussed below:

- Maximum enrollment authority;
- Farmable Wetlands Program enrollment changes;
- Tree thinning payments;
- Early termination of contracts;
- Managed harvesting and routine grazing payment reduction;
- Transition option funding;
- Prescribed grazing frequency; and,
- Intermittent and seasonal use of vegetative buffers.

Maximum Enrollment Authority

The maximum enrollment authority will be gradually reduced to 24 million acres by 2017, as required by the 2014 Farm Bill. The ''2010 Conservation Reserve Program Supplemental Environmental Impact Statement'' (referred to as the 2010 CRP SEIS) analyzed an alternative to reduce the enrollment authority to 24 million acres; therefore, that analysis is incorporated by reference.

Farmable Wetland Program Enrollment Changes

The change in the 2014 Farm Bill to reduce the maximum enrollment authority to 750,000 acres nationally (from 1 million) would still allow for up to approximately 410,000 acres of farmable wetlands to be enrolled in the Farmable Wetland Program. The mandated reduction in enrollment is not required to be analyzed since there is no discretion for any other level. Additionally, the mandatory reduction is not expected to affect actual enrollment, as historically enrollment has been well below the cap.

Tree Thinning Payments

The payment authority for tree thinning activities was reduced to $10 million and incentive payments are allowed. However, the 2014 Farm Bill change allows FSA to incentivize owners and operators to conduct other practices and utilize management tools that would promote forest management, enhance the overall health of tree stands, improve the condition of resources, or provide valuable habitat for wildlife. Less than $50,000 in payments has been provided for tree thinning activities since the enactment of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, commonly referred to as the 2008 Farm Bill). The reduction in funding available for tree thinning activities would not represent a real change in current use of the funds and does not require further analysis.

Early Termination of Contracts

As provided in the 2014 Farm Bill, the early termination provision of CRP that previously applied only to contracts entered into before January 1, 1995, will be modified to apply, only during fiscal year 2015, to allow CRP participants to elect early termination of certain CRP contracts, provided the contract has been in place for at least 5 years. The 2014 Farm Bill mandates providing an opportunity for the early termination of CRP contracts, if certain criteria are met; FSA does not have any discretion whether to implement that change. Therefore, this change does not require further NEPA analysis. FSA estimates that approximately 3 million acres would be eligible for early termination under the provision.

Managed Harvesting and Routine Grazing Payment Reduction

As required by the 2014 Farm Bill, a rental payment reduction of at least 25 percent for managed harvesting or routine grazing must be assessed. This change clarifies the existing administrative procedure related to these practices. A payment reduction of 25 percent was evaluated in the 2010 CRP SEIS; that analysis is incorporated by reference. Therefore, these changes do not require further analysis in the SPEIS.

Transition Option Funding

As specified in the 2014 Farm Bill, the funding authority to encourage the transfer of land from a retiring farmer or rancher to a beginning farmer or rancher, or to a socially disadvantaged farmer or rancher, would be increased to $33 million and would expand the eligibility to include farmers or ranchers who are military veterans (as defined in the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624 (commonly referred to as the 1990 Farm Bill)). This is a non-discretionary, administrative change and does not require further analysis in this SPEIS.

Prescribed Grazing Frequency

FSA allows annual prescribed grazing for control of invasive plants. The 2010 CRP SEIS evaluated the impacts of prescribed grazing in compliance with a grazing plan, which is part of the Conservation Plan that includes frequency, timing, stocking rates, and type of grazing animal. That analysis is incorporated by reference. The 2014 Farm Bill provides clarification that such grazing can occur as determined in consultation with the State Technical Committee; this change does not require further analysis.

Intermittent and Seasonal Use of Vegetative Buffers

The 2014 Farm Bill allows for the intermittent and seasonal use of vegetative buffer practices incidental to agricultural production on lands adjacent to the buffer provided this use does not destroy the permanent vegetative cover. This is an activity that already occurs under the current administration of the program and is referred to as ''incidental grazing.'' The 2014 Farm Bill clarifies this existing administrative procedure. This section was included as a result of agency and public comments.

Alternatives

Many provisions of the 2014 Farm Bill are non-discretionary, meaning that implementation is mandatory and specifically required by to be implemented. As FSA has no decision-making authority over these non-discretionary aspects of the 2014 Farm

Bill, they are assessed in the Final SPEIS as part of the No Action Alternative.

Other provisions of the 2014 Farm Bill provide overall guidance for CRP, but FSA has some discretion in how to implement those provisions. These discretionary aspects of the 2014 Farm Bill form the Proposed Action. In addition, FSA proposes to implement additional discretionary measures for targeting enrollment of environmentally sensitive lands and to expand the flexibility of emergency haying and grazing in drought-designated areas to provide necessary support to producers and ranchers during difficult times. The Final SPEIS assesses the following alternatives: The No Action Alternative and the Proposed Action.

No Action Alternative

The No Action Alternative includes the following, each of which is discussed below:

- Grasslands eligibility and authorized activities;
- Enrollment in new program during final year of contract; and
- Emergency haying and grazing payment reduction.

Grasslands Eligibility and Authorized Activities

The 2014 Farm Bill makes grasslands, which would have been previously eligible for the Grassland Reserve Program (GRP), eligible for enrollment in CRP. The eligibility of grasslands and authorized activities are the same as those previously defined for GRP. Grasslands enrollment would be limited to no more than 2 million acres at any given time and would count against the total CRP maximum enrollment authority. Enrollment would occur through Continuous Sign-up. Grasslands would be enrolled in 10- or 15-year contracts like other CRP acreage. Certain authorized activities on grasslands would differ from other CRP lands and include:

- Common grazing practices;
- Haying, mowing, or harvesting for seed production;
- Fire suppression, fire-related rehabilitation, and construction of fire breaks; and
- Grazing-related activities, such as fencing and livestock watering.

Enrollment in New Program During the Final Year of the Contract

In accordance with the 2014 Farm Bill, FSA will allow a CRP participant to enroll expiring CRP land into the Conservation Stewardship Program during the year prior to the expiration of the contract. FSA encourages agricultural and forestry producers to address resource concerns by undertaking additional conservation activities and improving and maintaining existing conservation systems. FSA pays participants for conservation performance—the higher the performance, the higher the payment. Land is enrolled in 5 year contracts through Continuous Sign-up. A stipulation in the 2014 Farm Bill would allow expiring CRP land to be enrolled in a new program, the Agricultural Conservation Easement Program, without violation of the CRP contract. In general, the Agricultural Conservation Easement Program combines the purposes of the Wetlands Reserve Program, the GRP, and the Farm and Ranchlands Protection Program by enrolling land in long-term or permanent easements.

Emergency Haying and Grazing Payment Reduction

As specified in the 2014 Farm Bill, harvesting, grazing, or other commercial use of the forage in response to a drought, flooding, or other emergency is authorized without any reduction in the rental rate. Under existing CRP rules, generally a 25 percent payment reduction is assessed for lands grazed or hayed during droughts or other emergencies. In response to worsening drought conditions in recent years, the rental payment reduction was reduced to 10 percent in 2012 and 2013. Removing the payment reduction for emergency haying and grazing is mandated in the 2014 Farm Bill and is therefore assessed as part of the No Action Alternative.

Proposed Action Alternative

Some elements of the 2014 Farm Bill provide overall guidance, but details of implementation are left to FSA's discretion. These discretionary aspects of the 2014 Farm Bill form the Proposed Action Alternative. In addition to the 2014 Farm Bill mandatory provisions, FSA proposes to implement additional discretionary measures for targeting enrollment of environmentally sensitive lands, increase flexibility in managed harvesting and routine grazing frequencies, and expand the flexibility of emergency haying and grazing in drought-designated areas. The targeted enrollment provision has been revised in response to agency and public comments. The components of the Proposed Action include the following, each of which is discussed below:

- Targeted enrollment;
- Managed harvesting and routine grazing frequencies; and
- Emergency haying and grazing on additional conservation practices.

Targeted Enrollment

The 2014 Farm Bill reduces the maximum enrollment for CRP to 24 million acres by 2017. The reduced enrollment authority requires on FSA to ensure enrolled land maximizes environmental benefits using available funding. Historically, FSA has used Continuous Sign-ups to target environmentally desirable lands through several initiatives and programs. As of September 2014, there were over 4 million acres enrolled under Continuous CRP.

The demand and need for conservation is increasing as budgetary and statutory constraints have tightened, and as a result FSA has explored alternative ways to enroll acres. To increase the environmental benefits generated per Federal dollar spent, FSA could implement a reverse auction when targeting enrollment for certain current or new initiatives. A reverse auction is simply a process in which many ''sellers'' compete with each other for the attention of a single ''buyer'' who then selects the most attractive offers from them. Appropriately developed, a limited reverse auction may motivate producers to submit a bid near the minimum amount they are willing to accept to enroll in CRP.

Managed Harvesting and Routine Grazing Frequencies

As specified in the 2014 Farm Bill, FSA continues to allow for managed harvesting (hay or biomass) and routine grazing of CRP acres provided that these activities are included in the Conservation Plan and are consistent with the conservation of soil, water quality, and wildlife habitat. Harvesting and grazing activities must still avoid the Primary Nesting Season. The State Technical Committee must develop appropriate vegetation management requirements and identify periods during which the activities could occur such that the frequency is:

- At least once every 5 years, but no more frequent than once every 3 years for managed harvesting; and
- Not more frequent than once every 2 years for routine grazing.

Emergency Haying and Grazing on Additional Conservation Practices

The Proposed Action includes making additional conservation practices that are currently ineligible for any type of haying or grazing, eligible for emergency haying and grazing to provide support to livestock producers during severe

drought conditions. Allowing haying and grazing on the proposed conservation practices in drought-designated areas would require concurrence and approval by certain State or Federal agencies.

Public Involvement

The Final SPEIS provides a means for the public and any interested parties to provide comments about the CRP changes analyzed in the SPEIS. The Final SPEIS can be reviewed online at: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topicnep-cd* or at *http://crpspeis.com.*

FSA received eight comments from Federal, state, and local government agencies, as well as private organizations and members of the concerned public in response to the NOI. The comments raised 55 individual issues covering a range of topics including legislation changes, CRP maximum enrollment and acreages, regional differences in haying and grazing impacts, lack of thorough environmental and socioeconomic impact analysis in previous NEPA documentation, and CRP funding policy. The comments were considered in developing the Proposed Action and the SPEIS environmental consequences to ensure the concerns were adequately addressed.

The NOA provided a summary of the changes to CRP, the Proposed Action, and the No Action Alternative. Also included in the NOA was a description of how to provide comments, as well as a list of the dates, times, and locations of the public meetings that were held as a part of the public involvement process. The information about where and when those meeting were held are shown below in Table 1. FSA held 5 public meetings to provide information and opportunities for discussing the changes to CRP identified in the 2014 Farm Bill and analyzed in the Draft SPEIS. The public meetings featured an Open House format, and interested parties were invited to attend the meetings at any time during the allotted timeframes. Posters and informational handouts as well as FSA representatives were available for the duration of the meetings to answer questions concerning the Draft CRP SPEIS.

TABLE 1—PUBLIC MEETING DATES, TIMES, AND LOCATIONS.

Date	Time	Location information
July 21, 2014	6:00 p.m.–8:00 p.m	Hilton Garden Inn, Spokane Airport, 9015 West SR Highway 2, Spokane, Washington, 99224.
July 22, 2014	6:00 p.m.–8:00 p.m	Holiday Inn, Great Falls, 1100 5th Street, South Falls, Montana, 59405.
August 4, 2014	6:00 p.m.–8:00 p.m	Plains Cotton Cooperative Association, 3301 East 50th Street, Lubbock, Texas, 79404.
August 5, 2014	6:00 p.m.–8:00 p.m	Stillwater Library, 1107 S Duck Street, Stillwater, Oklahoma, 74074.
August 6, 2014	6:00 p.m.–8:00 p.m	Courtyard By Marriott and Moorhead Area, Conference Center, 1080 28th Avenue, South, Moorhead, Minnesota, 56560.

FSA received 18 comments during the comment period. Those 18 comments included 75 issues to be considered in the Final SPEIS. Table 2 provides a breakdown of the comments by category.

TABLE 2—NUMBER OF COMMENTS RECEIVED BY CATEGORY

Comment category	Number of comments
Alternative	1
Cumulative impacts	3
Early termination of contract	2
Emergency haying and grazing	22
Farmable wetlands	1
Final year of contract	1
Grassland enrollment	14
Haying and grazing payment reduction	1
Intermittent and seasonal use of buffer	1
Managed harvesting and routine grazing frequencies	11

The comment summary report is included as an appendix in the CRP SPEIS. The report provides additional detail on the Draft SPEIS comment process, a copy of the NOA, copies of all public meeting materials, and responses to all 75 substantive issues and how they were addressed in the Final SPEIS.

Signed on December15, 2014.

Val Dolcini,

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

[FR Doc. 2014–29983 Filed 12–22–14; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northern Research Station, Timber & Watershed Laboratory, RWU NRS–01, West Virginia, Fernow Experimental Forest 2016 to 2020

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Forest Service published a document in the **Federal Register** of December 12, 2014, concerning a notice of intent to prepare an environmental impact statement. The document contained incorrect dates for the estimated publication of draft and final environmental impact statements. We anticipate completing the draft environmental impact statement in April 2015 and the final environmental impact statement is expected in June 2015.

FOR FURTHER INFORMATION CONTACT: Tom Schuler, Project Leader at USDA Forest Service, 304–478–2000. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

Correction

In the **Federal Register** of December 12, 2014, in FR Vol. 79, No. 239, on page 73880 in the third column correct the ''Dates'' caption to read:

DATES: Comments concerning the scope of the analysis must be received by January 26, 2015. The draft environmental impact statement is expected April 2015 and the final environmental statement is expected June 2015.

Dated: December 16, 2014.

Thomas Schuler,

Project Leader, NRS–01.

[FR Doc. 2014–30067 Filed 12–22–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* December 23, 2014.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''the Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review. Rebuttal comments will be due five days after submission of initial comments.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (''Q&V'') Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can

demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name [3], should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews:

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2015.

	Period to be reviewed
Antidumping Duty Proceedings	
BRAZIL: Polyethylene Terephthalate (PET) Film, Sheet, and Strip A–351–841	11/1/13–10/31/14
Terphane, Ltda.	
GERMANY: Lightweight Thermal Paper [4] A–428–840	11/1/13–10/31/14
Papierfabrik August Koehler SE	
INDIA: Polyethylene Terephthalate (PET) Film, Sheet and Strip [5] A–533–824	7/1/2013–6/30/2014
Uflex Ltd.	
MEXICO: Certain Circular Welded Non-Alloy Steel Pipe A–201–805	11/1/13–10/31/14
Lamina y Placa Comercial, S.A. de C.V.	
Productos Laminados de Monterrey, S.A. de C.V.	
MEXICO: Seamless Refined Copper Pipe and Tube A–201–838	11/1/13–10/31/14
GD Affiliates S. de R.L. de C.V.	
IUSA, S.A. de C.V.	
Nacional de Cobre, S.A. de C.V.	
REPUBLIC OF KOREA: Certain Circular Welded Non-Alloy Steel Pipe A–580–809	11/1/13–10/31/14
Husteel Co., Ltd.	
Hyundai HYSCO	
SeAH Steel Corporation	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Cut-to-Length Carbon Steel A–570–849	11/1/13–10/31/14
Hebei Iron & Steel Co., Ltd.	
Hunan Valin Xiangtan Iron & Steel Co., Ltd.	
Jiangyin Xingcheng Plastic Chemical Co., Ltd.	
Jiangyin Xingcheng Special Steel Works Co., Ltd.	
Wuyang Iron & Steel Co, Ltd.	
Xiamen C&D Paper & Pulp Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Diamond Sawblades and Parts Thereof A–570–900	11/1/13–10/31/14
Advanced Technology & Materials Co., Ltd.	
AT&M International Trading Co., Ltd.	
Beijing Gang Yan Diamond Products Co.	
Bosun Tools Co., Ltd.	
Central Iron and Steel Research Institute Group	
Chengdu Huifeng Diamond Tools Co., Ltd.	

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
China Iron and Steel Research Institute Group	
Cliff International Ltd.	
Danyang Aurui Hardware Products Co., Ltd.	
Danyang Dida Diamond Tools Manufacturing Co., Ltd.	
Danyang Huachang Diamond Tools Manufacturing Co., Ltd.	
Danyang NYCL Tools Manufacturing Co., Ltd.	
Danyang City Ou Di Ma Tools Co., Ltd.	
Danyang Tsunda Diamond Tools Co., Ltd.	
Danyang Weiwang Tools Manufacturing Co., Ltd.	
Electrolux Construction Products (Xiamen) Co., Ltd.	
Fujian Quanzhou Wanlong Stone Co., Ltd.	
Guilin Tebon Superhard Material Co., Ltd.	
Hangzhou Deer King Industrial and Trading Co., Ltd.	
Hangzhou Kingburg Import & Export Co., Ltd.	
Hebei Jikai Industrial Group Co., Ltd.	
Hong Kong Hao Xin International Group Limited	
Huachang Diamond Tools Manufacturing Co., Ltd.	
Hua Da Superabrasive Tools Technology Co., Ltd.	
Husqvarna (Hebei) Co., Ltd	
Huzhou Gu's Import & Export Co., Ltd.	
HXF Saw Co., Ltd.	
Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd.	
Jiangsu Fengtai Tools Co., Ltd.	
Jiangsu Fengyu Tools Co., Ltd.	
Jiangsu Huachang Tools Manufacturing Co., Ltd.	
Jiangsu Inter-China Group Corporation	
Jiangsu Youhe Tool Manufacturer Co., Ltd.	
Jiangyin Likn Industry Co., Ltd.	
Orient Gain International Limited	
Pantos Logistics (HK) Company Limited	
Protech Diamond Tools	
Pujiang Talent Diamond Tools Co., Ltd.	
Qingdao Hyosung Diamond Tools Co., Ltd.	
Qingdao Shinhan Diamond Industrial Co., Ltd.	
Qingyuan Shangtai Diamond Tools Co., Ltd.	
Quanzhou Shuangyang Diamond Tools Co., Ltd.	
Quanzhou Zhongzhi Diamond Tool Co., Ltd.	
Rizhao Hein Saw Co., Ltd.	
Saint-Gobain Abrasives (Shanghai) Co., Ltd.	
Shanghai Deda Industry & Trading Co., Ltd.	
Shanghai Jingquan Industrial Trade Co., Ltd.	
Shanghai Robtol Tool Manufacturing Co., Ltd.	
Shanghai Starcraft Tools Co. Ltd.	
Shijiazhuang Global New Century Tools Co., Ltd.	
Sichuan Huili Tools Co.	
Task Tools & Abrasives	
Wanli Tools Group	
Weihai Xiangguang Mechanical Industrial Co., Ltd.	
Wuhan Wanbang Laser Diamond Tools Co.	
Wuxi Lianhua Superhard Material Tools Co., Ltd.	
Xiamen ZL Diamond Technology Co., Ltd.	
Zhejiang Tea Import & Export Co., Ltd.	
Zhejiang Wanda Import and Export Co.	
Zhejiang Wanda Tools Group Corp.	
Zhejiang Wanli Super-hard Materials Co., Ltd.	
Zhejiang Wanli Tools Group Co., Ltd.	
Zhejiang Inter-China Import & Export Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Fresh Garlic A–570–831	11/1/13–10/31/14
American Pioneer Shipping	
Anhui Dongqian Foods Ltd.	
Anqiu Friend Food Co., Ltd.	
Anqiu Haoshun Trade Co., Ltd.	
APM Global Logistics (Shanghai) Co., Ltd.	
APS Qingdao	
Cangshan Qingshui Vegetable Foods Co., Ltd.	
Chengwu County Yuanxiang Industry & Commerce Co., Ltd.	
Chiping Shengkang Foodstuff Co., Ltd.	
CMEC Engineering Machinery Import & Export Co,. Ltd.	
Dalian New Century Food Co., Ltd.	
Dongying Shunyifa Chemical Co., Ltd.	
Dynalink Systems Logistics (Qingdao) Inc.	
Eimskip Logistics Inc.	
Feicheng Acid Chemicals Co., Ltd.	

	Period to be reviewed
Foshan Fuyi Food Co, Ltd.	
Frog World Co., Ltd.	
Golden Bridge International, Inc.	
Goodwave Technology Development Ltd.	
Guangxi Lin Si Fu Bang Trade Co., Ltd	
Hangzhou Guanyu Foods Co., Ltd.	
Hebei Golden Bird Trading Co., Ltd.	
Hejiahuan (Zhongshan) Electrical AP	
Henan Weite Industrial Co., Ltd.	
Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)	
Hongkong Golden Eagle Group Ltd.	
Hongqiao International Logistics Co.	
Intecs Logistics Service Co., Ltd.	
IT Logistics Qingdao Branch	
Jinan Farmlady Trading Co., Ltd.	
Jinan Solar Summit International Co., Ltd.	
Jinan Yipin Corporation Ltd.	
Jining De-Rain Trading Co., Ltd.	
Jining Greenstream Fruits & Vegetables Co., Ltd.	
Jining Highton Trading Co., Ltd.	
Jining Jiulong International Trading Co., Ltd.	
Jining Shengtai Fruits & Vegetables Co., Ltd.	
Jining Shunchang Import & Export Co., Ltd.	
Jining Tiankuang Trade Co., Ltd.	
Jining Trans-High Trading Co., Ltd.	
Jining Yifa Garlic Produce Co., Ltd.	
Jining Yongjia Trade Co., Ltd.	
Jinxiang Chengda Import & Export Co., Ltd.	
Jinxiang County Huaguang Food Import & Export Co., Ltd.	
Jinxiang Dacheng Food Co., Ltd.	
Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company)	
Jinxiang Dongyun Import & Export Co., Ltd.	
Jinxiang Feiteng Import & Export Co., Ltd.	
Jinxiang Fengsheng Import & Export Co., Ltd.	
Jinxiang Guihua Food Co., Ltd.	
Jinxiang Grand Agricultural Co., Ltd.	
Jinxiang Hejia Co., Ltd.	
Jinxiang Infarm Fruits & Vegetables Co., Ltd.	
Jinxiang Jinma Fruits Vegetables Products Co., Ltd.	
Jinxiang Kaihua Imp. & Exp Co., Ltd.	
Jinxiang Merry Vegetable Co., Ltd.	
Jinxiang Meihua Garlic Produce Co., Ltd.	
Jinxiang Richfar Fruits & Vegatables Co., Ltd.	
Jinxiang Shanyang Freezing Storage Co., Ltd.	
Jinxiang Shenglong Trade Co., Ltd.	
Jinxiang Tianheng Trade Co., Ltd.	
Jinxiang Tianma Freezing Storage Co., Ltd.	
Jinxiang Xian Baishite Trade Co., Ltd. (a/k/a Jinxiang Best Trade Co., Ltd.)	
Jinxiang Yuanxin Import & Export Co., Ltd.	
Juye Homestead Fruits and Vegetables Co., Ltd.	
Kingwin Industrial Co., Ltd.	
Laiwu Fukai Foodstuff Co., Ltd.	
Laiwu Jiahe Fruit and Vegatable Co., Ltd.	
Laizhou Xubin Fruits and Vegetables	
Linshu Dading Private Agricultural Products Co., Ltd.	
Linyi City Hedong District Jiuli Foodstuff Co.	
Linyi City Kangfa Foodstuff Drinkable Co., Ltd.	
Linyi Katayama Foodstuffs Co., Ltd.	
Linyi Tianqin Foodstuff Co., Ltd.	
Ningjin Ruifeng Foodstuff Co., Ltd.	
Qingdao Apex Shipping Co., Ltd.	
Qingdao BNP Co., Ltd.	
Qingdao Cherry Leather Garment Co., Ltd.	
Qingdao Chongzhi International Transportation Co., Ltd.	
Qingdao Everfresh Trading Co., Ltd.	
Qingdao Jiuqiu Industrial Co., Ltd.	
Qingdao Key Foods Co., Ltd.	
Qingdao Lianghe International Trade Co., Ltd.	
Qingdao Maycarrier Import & Export Co., Ltd.	
Qingdao Ritai Food Co., Ltd.	
Qingdao Saturn International Trade Co., Ltd.	
Qingdao Sea-Line International Trading Co., Ltd.	

	Period to be reviewed
Qingdao Sino-World International Trading Co., Ltd.	
Qingdao Tiantaixing Foods Co., Ltd.	
Qingdao Winner Foods Co., Ltd.	
Qingdao Xintianfeng Foods Co., Ltd.	
Qingdao Xin Tian Feng Food Co., Ltd.	
Qingdao Yuankang International	
Qingdao Zhuanghe Industrial Co., Ltd.	
Qufu Dongbao Import & Export Trade Co., Ltd.	
Rizhao Huasai Foodstuff Co., Ltd.	
Samyoung America (Shanghai) Inc.	
Sea Wealth Frozen Food Co., Ltd.	
Shandong Best Food Co., Ltd.	
Shandong Chengshun Farm Produce Trading Co., Ltd.	
Shandong Chenhe Intl Trading Co., Ltd.	
Shandong China Bridge Imports	
Shandong Dongsheng Eastsun Foods Co., Ltd.	
Shandong Garlic Company	
Shandong Jinxiang Zhengyang Import & Export Co., Ltd.	
Shandong Longtai Fruits and Vegetables Co., Ltd.	
Shandong Sanxing Food Co., Ltd.	
Shandong Wonderland Organic Food Co., Ltd.	
Shandong Xingda Foodstuffs Group Co., Ltd.	
Shandong Yipin Agro (Group) Co., Ltd.	
Shanghai Power Dragon	
Shanghai Ever Rich Trade Company	
Shanghai Goldenbridge International Co., Ltd.	
Shanghai Great Harvest International Co., Ltd.	
Shanghai LJ International Trading Co., Ltd.	
Shanghai Medicines & Health Products Import/Export Co., Ltd.	
Shanghai Yijia International Transportation Co., Ltd.	
Shenzhen Bainong Co., Ltd.	
Shenzhen Fanhui Import & Export Co., Ltd.	
Shenzhen Greening Trading Co., Ltd.	
Shenzhen Xinboda Industrial Co., Ltd.	
Shenzhen Xunong Trade Co., Ltd.	
Shenzhen Yuting Foodstuff Co., Ltd.	
Shijiazhuang Goodman Trading Co., Ltd.	
Sunny Import & Export Limited	
Tangerine International Trading Co.	
T&S International, LLC.	
Taian Eastsun Foods Co., Ltd.	
Taian Fook Huat Tong Kee Pte. Ltd.	
Taian Solar Summit Food Co., Ltd.	
Taiyan Ziyang Food Co., Ltd.	
Tianjin Spiceshi Co., Ltd.	
U.S. United Logistics (Ningbo) Inc.	
V.T. Impex (Shandong) Limited	
Weifang Chenglong Import & Export Co., Ltd.	
Weifang He Lu Food Import & Export Co., Ltd.	
Weifang Hong Qiao International Logistics Co., Ltd.	
Weifang Hongqiao International Logistics Co., Ltd.	
Weifang Jinbao Agricultural Equipment Co., Ltd.	
Weifang Naike Foodstuffs Co., Ltd.	
Weifang Shennong Foodstuff Co., Ltd.	
Weifang Tianchen Trading Co., Ltd.	
Weihai Textile Group Import & Export Co., Ltd.	
Wo Hing Food (HK) Co., Ltd.	
WSSF Corporation (Weifang)	
Xiamen Huamin Import Export Company	
Xiamen Keep Top Imp. and Exp. Co., Ltd.	
Xinjiang Top Agricultural Products Co., Ltd.	
XuZhou Heiners Agricultural Co., Ltd.	
XuZhou Simple Garlic Industry Co., Ltd.	
Yantai Jinyan Trading Inc.	
Yishui Hengshun Food Co., Ltd.	
You Shi Li International Trading Co., Ltd.	
Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd.	
Zhengzhou Dadi Garlic Industry Co., Ltd.	
Zhengzhou Harmoni Spice Co., Ltd.	
Zhengzhou Huachao Industrial Co., Ltd.	
Zhengzhou Xiwannian Food Co., Ltd.	
Zhengzhou Xuri Import & Export Co., Ltd.	
Zhengzhou Yuanli Trading Co., Ltd.	

	Period to be reviewed
Zhong Lian Farming Product (Qingdao) Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Polyethylene Terephthalate Film, Sheet and Strip A–570–924	11/1/13–10/31/14
Fuwei Films (Shandong) Co., Ltd.	
Shaoxing Xiangyu Green Packing Co., Ltd.	
Sichuan Dongfang Insulating Material Co., Ltd.	
Tianjin Wanhua Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Seamless Refined Copper Pipe and Tube A–570–964	11/1/13–10/31/14
China Hailiang Metal Trading	
Foshan Hua Hong Copper Tube Co., Ltd.	
Golden Dragon Holding (Hong Kong) International Co., Ltd.	
Golden Dragon Precise Copper Tube Group, Inc.	
Guilin Lijia Metals Co., Ltd.	
Hong Kong GD Trading Co., Ltd.	
Hong Kong Hailiang Metal	
Ningbo Jintian Copper Tube Co., Ltd.	
Shanghai Hailiang Copper Co., Ltd.	
Shanghai Hailiang Metal Trading Limited	
Sinochem Ningbo Ltd. & Sinochem Ningbo Import & Export Co., Ltd.	
Taicang City Jinxin Copper Tube Co., Ltd.	
Zhejiang Hailiang Co., Ltd.	
Zhejiang Jiahe Pipes Inc.	
Zhejiang Naile Copper Co., Ltd.	
UNITED ARAB EMIRATES: Polyethylene Terephthalate (PET) Film, Sheet and Strip A–520–803	11/1/13–10/31/14
Flex Middle East FZE	
JBK RAK LLC	
Countervailing Duty Proceedings	
INDIA: Polyethylene Terephthalate (PET) Film, Sheet and Strip [6] C–533–825	1/1/2013–12/31/2013
Uflex Ltd.	
Suspension Agreements	
None.	

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under

[4] We are not initiating an administrative review specifically with respect to Koehler America, Inc., as requested by one interested party, because this company is the U.S. affiliate of Papierfabrik August Koehler SE and is not a producer and/or an exporter of the subject merchandise. In addition, while one interested party requested a review of Papierfabrik August Koehler AG, we determined in a previous review that Papierfabrik August Koehler AG is the successor-in-interest to Papierfabrik August Koehler AG. *See Lightweight Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 79 FR 34719 (June 18, 2014). Therefore, we are only initiating a review of Papierfabrik August Koehler SE.

[5] The company listed was inadvertently omitted from the initiation notice that published on August 29, 2014 (79 FR 51548).

[6] The company listed was inadvertently omitted from the initiation notice that published on August 29, 2014 (79 FR 51548).

which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013–08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[7] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. Ongoing segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011 should use the formats for the revised certifications provided at the end of the *Interim Final Rule*.[8] All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[9] The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Final Rule,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm*, prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: December 17, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–30074 Filed 12–22–14; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* section 782(b) of the Act.

[8] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2); *Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011).

[9] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* the frequently asked questions regarding the *Final Rule*, available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–011]

Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) published the *Preliminary Determination* of the countervailing duty (CVD) investigation of certain crystalline silicon photovoltaic products (certain solar products) from the People's Republic of China (the PRC) on June 10, 2014.[1] The Department determines that countervailable subsidies are being provided to producers and exporters of certain solar products from the PRC. For information on the estimated subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice. The period of investigation (POI) is January 1, 2012, through December 31, 2012.

DATES: *Effective Date:* December 23, 2014.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Justin Neuman, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; Phone: (202) 482–3586, or (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner, SolarWorld Americas, Inc., filed its petition with the Department on December 31, 2013, seeking the imposition of countervailing duties on certain solar products from the PRC and we initiated this investigation on January 29, 2014.[2] The Department published the *Preliminary Determination* on June 10, 2014. On

[1] *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 79 FR 33174 (June 10, 2014) (*Preliminary Determination*).

[2] *See* Letter from Petitioner, ''Petition for the Imposition of Antidumping and Countervailing Duties: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan,'' (December 31, 2013) (the petition); Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Initiation of Countervailing Duty Investigation, 79 FR 4667 (January 29, 2014) (Initiation Notice).

June 9, 2014, the Government of the People's Republic of China submitted a ministerial error allegation regarding aspects of the *Preliminary Determination.* On June 10, 2014, the mandatory company respondents, Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliate Trina Solar (Changzhou) Science & Technology Co., Ltd. (Collectively, Trina Solar), and Wuxi Suntech Power Co., Ltd. and its cross-owned affiliates also submitted a ministerial error allegation. On July 31, 2014, we aligned the final determination in this investigation with the final determination in the companion antidumping duty investigation on certain solar products from the PRC.[3] On August 15, 2014, the Department rejected the Government of the People's Republic of China's (the GOC's) June 9, 2014, ministerial error allegation, as well as Trina Solar's and Wuxi Suntech's June 10, 2014, submissions, explaining that their submissions were noncompliant with the Department's procedures for submitting factual information. Trina Solar and Wuxi Suntech each timely resubmitted their ministerial error allegations on August 19, 2014. On August 21, 2014, the Department determined that no ministerial errors exist with respect to Trina Solar's and Wuxi Suntech's allegations.[4] Between August 20 and September 2, 2014, we conducted verification of the questionnaire responses submitted by the GOC, Trina Solar, and Wuxi Suntech.[5]

On October 3, 2014, in response to interested parties' comments on the scope of this investigation, the Department announced that it was considering the possibility of a scope clarification, described the possible clarification, and provided interested parties with an opportunity to submit comments on the potential clarification.[6]

Between October 16 and October 27, 2014, interested parties submitted case and rebuttal briefs. We did not conduct a hearing in this proceeding, as any requests for a hearing were timely withdrawn. A full discussion of the issues raised by parties for this final determination may be found in the Final Decision Memorandum.[7] The Final Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[8] ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Final Decision Memorandum and the electronic version are identical in content.

Scope Comments and Scope Clarification

As indicated in the ''Background'' section above, the Department received comments regarding the scope of this investigation from numerous interested parties. The Department summarized these comments and addressed them in the accompanying Final Decision Memorandum.[9] As explained in the Final Decision Memorandum, to facilitate the scope's administrability and enforcement, we have clarified the scope language such that subject merchandise includes all modules, laminates and/or panels assembled in the PRC that contain crystalline silicon photovoltaic cells produced in a customs territory other than the PRC.[10] The scope of the investigation for this final determination is below.

Scope of the Investigation

The merchandise covered by this investigation is modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of this investigation, subject merchandise includes modules, laminates and/or panels assembled in the PRC consisting of crystalline silicon photovoltaic cells produced in a customs territory other than the PRC.

Subject merchandise includes modules, laminates and/or panels assembled in the PRC consisting of crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this investigation are modules, laminates and/or panels assembled in the PRC, consisting of crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one module, laminate and/or panel is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all modules, laminates and/or panels that are integrated into the consumer good. Further, also excluded from the scope of this investigation are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, laminates and/or panels, from the PRC.[11]

[3] *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 79 FR 44402 (July 31, 2014).

[4] *See* Department Memorandum, ''Allegations of Ministerial Errors in the Preliminary Determination,'' (August 21, 2014).

[5] *See* Department Memoranda, ''Verification of the Questionnaire Responses Submitted by Changzhou Trina Solar Energy Co., Ltd. and its Cross-Owned Companies,'' (October 2, 2014); ''Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China,'' (October 3, 2014); and ''Verification of the Questionnaire Responses Submitted by Wuxi Suntech Power Co., Ltd. and its Cross-Owned Companies,'' (October 3, 2014).

[6] *See* Letter to All Interested Parties, ''Antidumping and Countervailing Duty Investigations of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Opportunity to Submit Scope Comments,'' (October 3, 2014).

[7] *See* the Department's Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,'' dated concurrently with this notice and hereby adopted by this notice (Final Decision Memorandum).

[8] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (IA ACCESS) to AD and CVD Centralized Electronic Service System (ACCESS). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

[9] *See* Final Decision Memorandum at Comment 1, ''Scope Comments and Scope Clarification.''

[10] *Id.*

[11] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic*

Continued

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Final Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Final Decision Memorandum, is attached to this notice as an Appendix.

Use of Adverse Facts Available

The Department notes that, in making these findings, we relied, in part, on facts available and, because one or more respondents did not act to the best of their ability to respond to the Department's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[12] For further information, *see* the section ''Use of Facts Otherwise Available and Adverse Inferences,'' in the Final Decision Memorandum.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for each company respondent. Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an ''all others'' rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

In accordance with section 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we apply an ''all others'' rate, which is normally calculated by weighing the subsidy rates of the individual companies selected as respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all others rate should exclude zero and *de minimis* rates calculated for the exporters and producers individually investigated. Where the rates for the investigated companies are all zero or *de minimis,* section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all others rate using ''any reasonable method.'' Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the all others rate by weight averaging the rates of the two individually investigated company respondents, because doing so risks disclosure of proprietary information. Therefore, and consistent with the Department's practice, for the all others rate, we calculated a simple average of the two company respondents' rates.[13] We determine the total estimated net countervailable subsidy rates to be:

Company	Subsidy Rate (*ad valorem*) (Percent)
Wuxi Suntech Power Co., Ltd.	27.64
Changzhou Trina Solar Energy Co., Ltd.	49.79
All Others	38.72

As a result of our *Preliminary Determination,* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from the PRC that were entered or withdrawn from warehouse, for consumption, on or after June 10, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 8, 2014, but to continue the suspension of liquidation of all entries from June 10, 2014 through October 7, 2014.[14]

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Return or Destruction of Proprietary Information

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 15, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—Final Decision Memorandum

I. Summary
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IV. Application of the Countervailing Duty Law to Imports from the PRC
V. Subsidies Valuation Information
VI. Benchmarks and Discount Rates
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Analysis of Programs

Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 FR 73017 (December 7, 2012).

[12] *See* sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).

[13] *See, e.g., Countervailing Duty Investigation of Chlorinated Isocyanurates From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Determination,* 79 FR 10097 (February 24, 2014), unchanged in *Countervailing Duty Investigation of Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 79 FR 56560 (September 22, 2014).

[14] *See* CBP's Antidumping Duty and Countervailing Duty Message Database, *http://adcvd.cbp.dhs.gov/adcvdweb/,* at Message No. 4283302 (October 10, 2014).

IX. Analysis of Comments
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[FR Doc. 2014–30071 Filed 12–22–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products From the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 23, 2014.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Cindy Robinson AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2014, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on certain lined paper products from the People's Republic of China.[1] Pursuant to a request from the Association of American School Paper Suppliers and its individual members (petitioners),[2] the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to Shanghai Lian Li Paper Products Co., Ltd. (Shanghai Lian Li) for the period September 1, 2013, through August 31, 2014.

On October 30, 2014, the Department published the Notice of Initiation.[3] On November 24, 2014, Petitioners timely withdrew their request for administrative review of the antidumping duty order with respect to Shanghai Lian Li.

Rescission of the 2013–2014 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The instant review was initiated on October 30, 2014.[4] Petitioners withdrew their request for a review on November 24, 2014, which is within the 90-day deadline. No other party requested an administrative review of this segment of the proceeding. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review of the antidumping duty order on certain lined paper products from the People's Republic of China.

Assessment

Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period September 1, 2013, through August 31, 2014.

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a 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 increase in the amount of antidumping duties reimbursed.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 79 FR 51958 (September 2, 2014).

[2] The individual members are ACCO Brands USA LLC; Norcom, Inc.; and Top Flight, Inc.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 64565 (October 30, 2014) (*Initiation*).

[4] *See id.*

Dated: December 15, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–29783 Filed 12–22–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

University of California Los Angeles, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 14–012. Applicant: University of California Los Angeles, Los Angeles, CA 90095. Instrument: iCorr (Correlative Microscopy). Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 79 FR 64367, October 29, 2014. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to perform correlative microscopy of biological samples from micro to nanometer scales, using fluorescence light microscopy and cryo electron microscopy, used in conjunction to reveal dynamics and functionalities of the materials.

Docket Number: 14–026. Applicant: Stanford University, Stanford, CA 94305. Instrument: iMIC Digital Microscope 2.0 system full set (0000–530–25032). Manufacturer: FEI Munich (formerly TILL Photonics), Germany. Intended Use: See notice at 79 FR 64367, October 29, 2014. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to perform high-speed imaging and simultaneous large volume data processing of cultured neurons from rats and mice growing in special made PDMS microfluidic chambers. A fluorescent microscopy system which is able to scan and acquire large amounts of images at high speeds is required, as well as the system being able to maintain stable focus plane over a long time-lapse recording.

Docket Number: 14–027. Applicant: Howard Hughes Medical Institute, Chevy Chase, MD 20815. Instrument: JEM–1400 Transmission Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 79 FR 64367, October 29, 2014. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to research and discover the genetic pathways of various neurological diseases, using tissue samples from animal models which are examined for changes in their subcellular organelles that are believed to result from the effects of the diseases.

Docket Number: 14–028. Applicant: University of Colorado Boulder, Boulder, CO 80309. Insrument: Fiberoptic Cable. Manufacturer: Ceramoptec Gmbh, Germany. Intended Use: See notice at 79 FR 64367, October 29, 2014. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to pursue a research path towards constructing an off grid toilet that converts human waste into fertilizer or solid fuel, using solar energy transmitted by fiberoptic cable to a reaction chamber. A fiberoptic cable that is able to withstand high temperatures (300–700 degrees C) without a high transmission loss is required.

Docket Number: 14–029. Applicant: Howard Hughes Medical Institute, Chevy Chase, MD 20815. Instrument: KonTEM PhazR System. Manufacturer: KonTEM GmbH, Germany. Intended Use: See notice at 79 FR 64367, October 29, 2014. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be attached to an electron microscope, in place of one of the apertures. It will be inserted into the electron beam path to enhance image contrast for the imaging of proteins such as ion channels.

Dated: December 15, 2014.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Enforcement and Compliance.

[FR Doc. 2014–30069 Filed 12–22–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–853]

Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 23, 2014.

SUMMARY: The Department of Commerce (the ''Department'') determines that imports of certain crystalline silicon photovoltaic products (''certain solar products'') from Taiwan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). The final weighted-average dumping margins for this investigation are listed in the ''Final Determination Margins'' section below.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, Charles Riggle, or James Martinelli AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4162, (202) 482–0650, or (202) 482–2923, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary determination in the LTFV investigation of certain solar products from Taiwan on July 31, 2014.[1] On

[1] *See Certain Crystalline Silicon Photovoltaic Products From Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and*

August 22, 2014, the Department published the notice of amended preliminary determination in the LTFV investigation of certain solar products from Taiwan.[2] The following events occurred since the preliminary determination. Between August 11, 2014 and September 13, 2014, the Department conducted verifications of Gintech Energy Corporation (''Gintech'') in Taipei, Taiwan. Between August 18, 2014 and September 17, 2014, the Department conducted verifications of Motech Industries, Inc. (''Motech'') in Tainan, Taiwan, and Motech America LLC (''MA'') in New Castle, Delaware. The Department issued the sales and cost verification reports of Gintech on September 23, 2014, and September 30, 2014, respectively.[3] The Department issued the sales verification reports of Motech and MA on September 30, 2014, and October 3, 2014, respectively,[4] and issued the cost verification report of Motech on October 1, 2014.[5]

On October 3, 2014, in response to interested parties' comments on the scope of this investigation, the Department announced that it was considering the possibility of a scope clarification, described the possible clarification, and provided interested parties with an opportunity to submit comments on the potential clarification.[6]

On October 16, 2014, Motech, Gintech,[7] SolarWorld Americas Inc. (''Petitioner'') (formerly SolarWorld Industries America, Inc.), and other interested parties submitted case briefs. On October 22, 2014, Gintech, Motech, Petitioner, and other interested parties submitted rebuttal briefs. On October 27, 2014, Gintech, Petitioner and other interested parties filed rebuttal comments specifically regarding the scope of the investigation. Although certain parties requested that a hearing be held, all requests were withdrawn between October 31, 2014 and November 5, 2014. Thus, the Department did not hold a hearing with respect to this investigation.

Period of Investigation

The period of investigation (''POI'') is October 1, 2012, through September 30, 2013.

Scope Comments and Scope Clarification

As indicated in the ''Background'' section above, the Department received comments regarding the scope of this investigation from numerous interested parties. The Department summarized these comments and addressed them in the accompanying Issues and Decision Memorandum.[8] As explained in the Issues and Decision Memorandum, we have clarified the scope language; *see* Comment 1 of the Issues and Decision Memorandum. The scope of the investigation for this final determination is below.

Certification Requirements

In the *Preliminary Determination*, the Department announced that if an importer imports solar modules that it claims (1) do not contain solar cells that were produced in Taiwan or (2) imports solar modules assembled in Taiwan that it claims do not contain solar cells manufactured in third countries using ingots, wafers, or partially produced solar cells manufactured in Taiwan, the importer, and Taiwan exporter of those solar modules, are required to certify the claim and maintain documentation supporting the certifications.[9] Given the clarification to the scope language, the Department is modifying the language of the certifications required in this proceeding. Importers and Taiwan exporters that claim solar panels/modules do not contain solar cells that were produced in Taiwan will be required to complete and maintain the revised certifications included in Appendix II of this notice for merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The certification requirements are described below.

If an importer imports solar panels/modules that it claims do not contain solar cells that were produced in Taiwan, the importer is required to maintain the importer certification in Appendix II. The importer and exporter are also required to maintain the exporter certification in Appendix II if the exporter of the panels/modules for which the importer is making the claim is located in Taiwan. The importer certification must be completed, signed, and dated at the time of the entry of the panels/modules. The exporter certification must be completed, signed, and dated at the time of shipment of the relevant panels/modules. The importer and Taiwan exporter are required to maintain sufficient documentation to support their certifications. While importers and Taiwan exporters are required to maintain the aforementioned certifications and documentation, they will not have to provide this information to CBP as part of the entry documents, unless CBP specifically requests that they provide the certification and/or documentation.

If it is determined that the certification or documentation requirements noted in the certification have not been met, CBP is instructed to suspend all unliquidated entries for which the requirements were not met and require the posting of an antidumping duty cash deposit on those

Postponement of Final Determination, 79 FR 44395 (July 31, 2014) (''*Preliminary Determination*'').

[2] *See Certain Crystalline Silicon Photovoltaic Products From Taiwan: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value*, 79 FR 49754 (August 22, 2014).

[3] *See* Memorandum to the File, from Charles Riggle and Magd Zalok, International Trade Compliance Analysts, AD/CVD Operations, Office IV, titled ''Verification of Gintech Energy Corporation's Responses in the Antidumping Duty Investigation of Certain Silicon Photovoltaic Products from Taiwan,'' dated September 23, 2014; *see* Memorandum to the File, from Heidi K. Schriefer and Robert Greger, Senior Accountants, AD/CVD Office of Accounting, titled ''Verification of the Cost Response of Gintech Energy Corporation in the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan,'' dated September 30, 2014.

[4] *See* Memorandum to the File, from Magd Zalok and Charles Riggle, International Trade Compliance Analysts, AD/CVD Operations, Office IV, titled ''Verification of the Sales Responses of Motech Industries, Inc. in the Less-Than-Fair-Value Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan,'' dated September 30, 2014; *see* Memorandum to the File, from Magd Zalok and James Martinelli, International Trade Compliance Analysts, AD/CVD Operations, Office IV, titled ''Verification of the Sales Responses of Motech America LLC in the Less-Than-Fair-Value Investigation of Crystalline Silicon Photovoltaic Products from Taiwan,'' dated October 3, 2014.

[5] *See* Memorandum to the File, from Robert Greger, Senior Accountant, AD/CVD Office of Accounting, titled ''Verification of Motech Industries, Inc. in the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan,'' dated October 1, 2014.

[6] *See* Letter to All Interested Parties ''Re: Antidumping and Countervailing Duty Investigations of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Opportunity to Submit Scope Comments,'' dated October 3, 2014.

[7] On October 29, 2014, the Department rejected Gintech's case brief because it contained untimely new factual information. On October 31, 2014, Gintech re-submitted its case brief after redacting the untimely new factual information rejected by the Department.

[8] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, From Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding ''Certain Crystalline Silicon Photovoltaic Products from Taiwan: Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value,'' dated concurrently with and hereby adopted by this notice (''Issues and Decision Memorandum'').

[9] *See Preliminary Determination*, 79 FR 44901–44902.

entries equal to the applicable rate in effect at the time of entry.[10]

If a solar panel/module contains some solar cells produced in Taiwan but the importer is unable, or unwilling, to identify the total value of the panel/module subject to antidumping duty cash deposits, CBP is instructed to suspend all unliquidated entries for which the importer has failed to supply this information and require the posting of an antidumping duty cash deposit on the total entered value of the panel/module equal to the applicable rate in effect at the time of entry.[11]

The Department intends to provide guidance, through a **Federal Register** notice, regarding any changes to the certification structure or potential future electronic filing requirements relating to these certifications and accompanying documentation with CBP once the Department is integrated into the International Trade Data System/Automated Commercial Environment, the import and export processing system being built by CBP to replace its legacy systems.

Scope of the Investigation

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials.

Subject merchandise includes crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Modules, laminates, and panels produced in a third-country from cells produced in Taiwan are covered by this investigation. However, modules, laminates, and panels produced in Taiwan from cells produced in a third-country are not covered by this investigation.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Further, also excluded from the scope of this investigation are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China (''PRC'').[12] Also excluded from the scope of this investigation are modules, laminates, and panels produced in the PRC from crystalline silicon photovoltaic cells produced in Taiwan that are covered by an existing proceeding on such modules, laminates, and panels from the PRC.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Issues and Decision Memorandum. A list of the issues which the parties raised and to which the Department responded in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via AD and CVD Centralized Electronic Service System (ACCESS).[13] ACCESS is available to registered users at *http://access.trade.gov* and it is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes to the Margin Calculations Since the Preliminary Determination

Based on the Department's analysis of the comments received and our findings at verification, we made certain changes to Gintech and Motech's margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Analysis Memoranda, all dated concurrently with this notice.[14]

Verification

As provided in section 782(i) of the Act and 19 CFR 351.307(b)(1)(i), in August and September 2014, the Department verified the information submitted by Gintech and Motech for use in the final determination. The Department used standard verification procedures, including examination of relevant sales and accounting records, as well as original source documents provided by Gintech and Motech.

Final Determination Margins

The Department determines that the following estimated weighted-average dumping margins exist for the period October 1, 2012, through September 30, 2013.

[10] However, if the certification also does not meet the requirements set forth in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part,* 77 FR 63791 (October 17, 2012) (*Solar I*), then the applicable rate is the appropriate rate as set forth in the *Solar I* order.

[11] However, if the certification also does not meet the requirements set forth in *Solar I*, then the applicable rate is the appropriate rate as set forth in the *Solar I* order.

[12] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

[13] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov*. The Final Rule changing the references to ACCESS in the regulations can be found at 79 FR 69046 (November 20, 2014).

[14] *See* Memorandum from Magd Zalok, International Trade Compliance Analyst, Enforcement & Compliance, Office IV, to the File, ''Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Motech Analysis Memorandum for the Final Determination,'' dated concurrently with this notice; *see* Memorandum from Charles Riggle, International Trade Compliance Analyst, Enforcement & Compliance, Office IV, to the File, ''Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Gintech Analysis Memorandum for the Final Determination,'' dated concurrently with this notice.

Producer or exporter	Weighted-average dumping Margin (Percent)
Gintech Energy Corporation	27.55
Motech Industries, Inc.	11.45
All Others	19.50

Disclosure

We intend to disclose to parties the calculations performed for this final determination within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all appropriate entries of certain solar products from Taiwan as described in the ''Scope of the Investigation'' section of this notice, which were entered, or withdrawn from warehouse, for consumption on or after July 31, 2014, the date of publication of the preliminary determination of this investigation in the **Federal Register**.

Further, the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price as follows: (1) For the respondents listed in the table above (*i.e.,* Gintech and Motech), the cash deposit rate will be equal to the estimated weighted-average dumping margin which the Department determined in this final determination; (2) if the exporter is not a respondent examined in this investigation, but the producer is, the cash deposit rate will be the rate established for the producer of the subject merchandise; and (3) the cash deposit rate for all other producers or exporters will be 19.50 percent, the all others rate listed above. The suspension of liquidation instructions will remain in effect until further notice.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all-others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding all rates that are zero or *de minimis*, and all rates determined entirely under section 776 of the Act. The ''all-others'' rate is based on the estimated weighted-average dumping margins calculated for Gintech and Motech, the mandatory respondents for which the Department calculated a rate. Because we individually examined two companies in this investigation, basing the estimated dumping margin for the companies not individually examined on a weighted-average of the dumping margins for the two individually examined companies risks disclosure of business proprietary information (''BPI''). Therefore, we calculated both a weighted-average of the dumping margins calculated for the two mandatory respondents using public values for their sales of subject merchandise, and a simple average of these two dumping margins, and selected, as the ''all-others'' rate, the average that provides a more accurate proxy for the weighted-average margin of both companies calculated using BPI.[15]

International Trade Commission Notification

In accordance with section 735(d) of the Act, we notified the U.S. International Trade Commission (''ITC'') of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain crystalline silicon photovoltaic products from Taiwan no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the associated proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Return or Destruction of Proprietary Information

This notice serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 15, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Discussion of the Issues
A. General Issues
1. Scope Comments and Scope Clarification
A. Consistency with *Solar I* and Court Decisions
B. Extent of the Scope Clarification
C. Timelines of a Potential Scope Clarification
D. Impact of a Scope Clarification on the ITC's Final Determination
E. Consistency of the Scope as Clarified in the October 3rd Letter With the United States' WTO Obligations
F. Administrability Concerns
G. Treatment of U.S. Solar Cells Assembled into Solar Modules in Taiwan
H. Comments Based on a Department Decision not to Adopt the Scope as stated in the October 3rd Letter
I. Solar Cells Assembled into Solar Modules in Mexico
2. Whether the Department Appropriately Applied the Cohen's *d* test
3. Whether the Department's Respondent Selection Process was Unlawful or Unsupported
B. Issues Involving Gintech
4. Whether to Include Reported ''Indirect'' Sales in the Calculation of U.S. Price
5. Whether to Base U.S. Price on a Small Sample of U.S. Sales
6. Whether to Exclude Home Market Sales Made in Small Quantities
7. Whether to Treat Further Processed Sales in a Third Country and Resold by Unaffiliated Parties as Indirect Sales
8. Whether to Exclude Sales of Cells to Chinese Manufacturers
9. Whether the Major Input Rule Should be Applied to Gintech's Purchases of Wafers from its Affiliate Utech (Major Input Rule)
10. Whether to Apply the Major Input Rule to Wafers that Utech Purchased and Resold to Gintech (Purchased Wafers)
11. Whether to Recalculate Gintech's Reported Paste Scrap Offset Based on a POI Average Value (Paste Scrap Offset)

[15] *See* Memorandum to the File from James Martinelli, International Trade Compliance Analyst, AD/CVD Operations, Office IV, Enforcement and Compliance, regarding ''Antidumping Investigation: Certain Crystalline Silicon Photovoltaic Products from Taiwan Calculation of the All Others Rate'' (December 15, 2014).

12. Whether the Department Should Reallocate to Prime Products the Production Costs of Off-Grade Cells Reported to the Department as Non-Prime Products (Non-Prime Products)
13. Whether the Department Should Adjust the Affiliated Supplier's Cost of Wafers Before Testing Gintech's Transfer Prices with the Affiliated Wafer Supplier (Affiliated's COP)
14. Whether the Department Should Include Losses Related to Inventory Disposals in Gintech's G&A Expense Rate (Inventory Disposals)
15. Whether the Department Should Include LCM Adjustments in Gintech's Reported Costs (LCM Adjustments)
16. Whether the Department Should Account for the Differences between Gintech's Total Cost Accounting System Costs and its Total Reported Costs (Methodological Difference)
17. Whether the Department Should Adjust Gintech's Financial Expense Rate for Certain Items Identified at Verification (Financial Expense Rate)

C. Issues Involving Motech

18. Whether to Include Reported ''Indirect'' Sales in the Calculation of U.S. Price
19. Whether to Exclude Sales of Modules Produced by Motech's Affiliate in the PRC
20. Whether U.S. Indirect Selling Expenses Should Not Include Expenses for R&D
21. Whether Motech's Short-Term Interest Rate Should be used to Calculate U.S. Credit and Inventory Carrying Cost
22. Whether U.S. Warehousing Expense Calculation Should be Revised
23. Whether a Different Basis Should be Used for Certain Payment Dates
24. Whether a Downward Adjustment Should be Made to the Price for a Home Market Transaction
25. Whether Grade Z Cells Should Bear the Same Cost as Grades A and B Cells
26. Whether the Inventory Adjustment Ratio Should be Revised
27. Whether the Financial Expense Ratio Calculation Should Include the Gains on Foreign Currency Translation
28. Whether the Cost for One of Motech's Modules CONNUMs Should be Adjusted

V. Recommendation

Appendix II

Importer Certification

I hereby certify that I am an official of (insert name of company importing solar panels/modules), that I have knowledge of the facts regarding the importation of the solar panels/modules or other products containing solar panels/modules that entered under entry number(s) (insert entry number(s) covered by the certification), and that these solar panels/modules do not contain solar cells produced in Taiwan.

By signing this certificate, I also hereby certify that (insert name of company importing solar panels/modules) maintains sufficient documentation supporting this certification for all solar cells used to produce the solar panels/modules imported under the above-referenced entry number(s). I understand that agents of the importer, such as brokers, are not permitted to make this certification. Also, I am aware that records pertaining to this certification may be requested by CBP. I understand that this certification must be completed at the time of the entry. I also understand that failure to maintain the required certification or failure to substantiate the claim that the panels/modules do not contain solar cells produced in Taiwan will result in suspension of all unliquidated entries for which these requirements were not met and the requirement that the importer post an AD cash deposit on those entries equal to the applicable rate in effect at the time of entry.[1]

Name of Company Official

Title

Date

Exporter Certification

I hereby certify that I am an official of (insert name of company exporting solar panels/modules), that I have knowledge of the facts regarding the exportation of the solar panels/modules or other products containing the solar panels/modules identified below, and that these solar panels/modules do not contain solar cells produced in Taiwan.

By signing this certificate, I also hereby certify that (insert name of company exporting solar panels/modules) maintains sufficient documentation supporting this certification for all solar cells used to produce the solar panels/modules identified below. I am aware that records pertaining to this certification may be subject to verification by Department of Commerce officials and I consent to verification with respect to this certification and these records. I understand that this certification must be completed at the time of shipment. I also understand that failure to maintain the required certification or failure to substantiate the claim that the panels/modules do not contain solar cells produced in Taiwan will result in suspension of all unliquidated entries for which these requirements were not met and the requirement that the importer post an AD cash deposit on those entries equal to the applicable rate in effect at the time of entry.[1] The exports covered by this certification are (insert invoice numbers, purchase order numbers, export documentation, etc. to identify the exports covered by the certification).

Name of Company Official

Title

Date

[FR Doc. 2014–30107 Filed 12–22–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] However, if the certification also does not meet the requirements set forth in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part,* 77 FR 63791 (October 17, 2012) (*Solar I*), then the applicable rate is the appropriate rate as set forth in the *Solar I* order.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 23, 2014.

SUMMARY: The Department of Commerce (the Department) determines that certain crystalline silicon photovoltaic products (certain solar products) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins for this investigation are listed in the ''Final Determination Margins'' section below.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2769 or (202) 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary determination in the LTFV investigation of certain solar products from the PRC on July 31, 2014.[1] The following events occurred since the preliminary determination. Between August 4 and 14, 2014, the Department conducted a verification of Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd. (collectively, Trina

[1] *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 79 FR 44399 (July 31, 2014) (''*Preliminary Determination*'').

Solar) in Changzhou, PRC, and conducted a verification of their U.S. sales affiliate, Trina Solar (U.S.) Inc., in San Jose, California. Between August 7 and 20, 2014, the Department conducted a verification of Renesola Jiangsu Ltd., Renesola America Inc., Jinko Solar Import and Export Co., Ltd., and Jinko Solar (U.S.) Inc., in Shanghai and Yixing, PRC, and in San Francisco, California.[2] The Department issued the verification reports regarding Trina Solar on September 26, 2014.[3] The Department issued the verification reports regarding Renesola/Jinko on September 30 and October 2, 2014.[4]

On October 3, 2014, in response to interested parties' comments on the scope of this investigation, the Department announced that it was considering the possibility of a scope clarification, described the possible clarification, and provided interested parties with an opportunity to submit comments on the potential clarification.[5]

On October 16, 2014, Trina Solar, Renesola/Jinko, SolarWorld Americas Inc. (Petitioner) (formerly SolarWorld Industries America, Inc.), the Government of the PRC, a U.S. importer, Suniva Inc., and certain separate rate applicants submitted case briefs.[6] From October 22, 2014 to October 27, 2014, Trina Solar, Renesola/Jinko, Petitioner, and certain separate rate applicants submitted rebuttal briefs.[7]

Although certain parties requested that a hearing be held, on October 24, 2014, all requests were subsequently withdrawn. Thus, the Department did not hold a hearing with respect to this investigation.

Period of Investigation

The period of investigation (POI) is April 1, 2013, through September 30, 2013. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was December 2013.[8]

Scope Comments and Scope Clarification

As indicated in the ''Background'' section above, the Department received comments regarding the scope of this investigation from numerous interested parties. The Department summarized these comments and addressed them in the accompanying Issues and Decision Memorandum.[9] As explained in the Issues and Decision Memorandum, we have clarified the scope language such that subject merchandise includes all modules, laminates and/or panels assembled in the PRC that contain crystalline silicon photovoltaic cells produced in a customs territory other than the PRC.[10] The scope of the investigation for this final determination is below.

[2] The Department is treating the Renesola and Jinko companies under investigation as a single entity hereinafter collectively referred to as Renesola/Jinko. *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, From Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value,'' dated concurrently with and hereby adopted by this notice (''Issues and Decision Memorandum'') at Comment 16.

[3] *See* Memorandum to the File, from Erin Kearney, Patrick O'Connor, and Jeff Pedersen, International Trade Compliance Analysts, AD/CVD Operations, Office IV, titled ''Verification of the Sales and Factors of Production Information Submitted by Changzhou Trina Solar Energy Co., Ltd. in the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China (''PRC''),'' dated September 26, 2014; *see* Memorandum to the File, from Patrick O'Connor and Jeff Pedersen, International Trade Compliance Analysts, AD/CVD Operations, Office IV, titled ''Verification of Trina Solar (U.S.) Inc. in the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China (''PRC''),'' dated September 26, 2014.

[4] *See* Memorandum to the File, from Thomas Martin, Lilit Astvatsatrian, Theresa Deeley, International Trade Compliance Analysts, AD/CVD Operations, Office IV, titled ''Verification of the Sales Responses of Renesola America Inc. in the Antidumping Investigation of Certain Silicon Crystalline Photovoltaic Products from the People's Republic of China,'' dated September 30, 2014; *see* Memorandum to the File, from Thomas Martin, Lilit Astvatsatrian, Theresa Deeley, International Trade Compliance Analysts, AD/CVD Operations, Office IV, titled ''Verification of Jinko Solar Import & Export Co., Ltd. and Jinko Solar (U.S.) Inc. in the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products, from the People's Republic of China (''PRC''),'' dated September 30, 2014; *see* Memorandum to the File, from Thomas Martin, Lilit Astvatsatrian, Theresa Deeley, International Trade Compliance Analysts, AD/CVD Operations, Office IV, titled ''Verification of the Sales and Factors Responses of Renesola Jiangsu Ltd. in the Antidumping Duty Investigation of Certain Silicon Crystalline Photovoltaic Products from the People's Republic of China,'' dated October 2, 2014.

[5] *See* Letter to All Interested Parties ''Re: Antidumping and Countervailing Duty Investigations of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Opportunity to Submit Scope Comments,'' dated October 3, 2014.

[6] *See* Letter from fourteen separate rate applicants, ''Re: Antidumping and Countervailing Duty Investigations of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China, and Antidumping Duty Investigation of Certain Crystalline Silicon Photo voltaic Products from Taiwan: Respondents' Case Brief,'' dated October 16, 2014; Letter from the PRC Government, ''Re: Government of China's Case Brief: Certain Crystalline Silicon Photovoltaic Products from the People's Republic Of China,'' dated October 16, 2014; Letter from Asun Energy Co., Ltd. (a/k/a Suzhou Asun Energy Co., Ltd.), ''Re: Administrative Case Brief: Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China (A–570–010),'' dated October 16, 2014; Letter from Trina, ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Case Brief of Changzhou Trina Solar Energy Co., Ltd.,'' dated October 16, 2014; Letter from Renesola, ''Re: Certain Crystalline Silicon Photovoltaic Products from China; Case Brief,'' dated October 16, 2014; Letter from Junco, ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Case Brief,'' dated October 16, 2014; Letter from Hanwha QCELLS USA, Inc., ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,'' dated October 16, 2014; Letter from Suniva, Inc., ''Re: Case Brief on Scope Issues Certain Crystalline Silicon Photovoltaic Products from China and Taiwan,'' dated October 16, 2014; Letter from tenKsolar (Shanghai) Co., Ltd., ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan– Case Brief,'' dated October 16, 2014; Letter from SNJ Enterprises LLC dba Zamp Solar and Quebec Inc. dba RDK Products, ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Case Brief,'' dated October 16, 2014; Letter from Petitioner, ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Case Brief of Solar World Americas, Inc.,'' dated October 16, 2014.

[7] *See* Letter from Hanwha SolarOne (Qidong) Co., Ltd. and Hanwha SolarOne Hong Kong Limited, ''Re: Rebuttal Brief: Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China (A–570–010),'' dated October 22, 2014; Letter from Asun Energy Co., Ltd. (a/k/a Suzhou Asun Energy Co., Ltd.), ''Re: Rebuttal Brief: Antidumping/Countervailing Duty Investigations of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,'' dated October 22, 2014; Letter from Shangluo BYD Industrial Co., Ltd. and Shanghai BYD Co., Ltd. ''Re: Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan: Rebuttal Brief,'' dated October 22, 2014; Letter from Changzhou Almaden Co., Ltd., ''Re: Crystalline Silicon Photovoltaic Products from P.R. China: Rebuttal Brief,'' dated October 22, 2014; Letter from Renesola ''Re: Certain Crystalline Silicon Photovoltaic Products from China; Rebuttal Brief,'' dated October 22, 2014; Letter from Petitioner, ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Rebuttal Brief of Solar World Americas, Inc.,'' dated October 22, 2014; Letter from Trina, ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Rebuttal Brief of Changzhou Trina Solar Energy Co., Ltd.,'' dated October 22, 2014. *see also* Letter from fourteen separate rate applicants, ''Re: Antidumping and Countervailing Duty Investigations of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China, and Antidumping Duty Investigation of Certain Crystalline Silicon Photo voltaic Products from Taiwan: Respondents' Rebuttal Brief,'' dated October 27, 2014; Letter from Hanwha QCELLS USA, Inc. ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,'' dated October 27, 2014; Letter from SNJ Enterprises LLC dba Zamp Solar LLC and Quebec Inc. dba RDK Products, ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Rebuttal Brief,'' dated October 27, 2014; Letter from Petitioner, ''Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: SolarWorld's Rebuttal Brief on Scope,'' dated October 27, 2014.

[8] 19 CFR 351.204(b)(1).

[9] *See* Issues and Decision Memorandum.

[10] *Id.* at Comment 1.

Certifications No Longer Required for This Proceeding

In the *Preliminary Determination,* the Department announced that (1) if an importer imports solar modules that were assembled in the PRC and (2) claims the solar modules do not contain solar cells manufactured in third countries using ingots, wafers, or partially produced solar cells manufactured in the PRC, the importer and PRC exporter of those solar modules are required to certify the claim and maintain documentation supporting the certifications.[11] However, given the clarification to the scope language, the Department is revoking the importer and exporter certification requirements announced in the *Preliminary Determination.* Importers and PRC exporters will not be required to maintain the certifications identified in the *Preliminary Determination* for merchandise entered, or withdrawn from warehouse, for consumption on or after July 31, 2014, the date of publication of the *Preliminary Determination* notice in the **Federal Register**. The revocation of the certification requirements previously established in this investigation does not change or rescind the certification requirements established in connection with the existing AD order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC.[12]

Scope of the Investigation

The merchandise covered by this investigation is modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of this investigation, subject merchandise includes modules, laminates and/or panels assembled in the PRC consisting of crystalline silicon photovoltaic cells produced in a customs territory other than the PRC.

Subject merchandise includes modules, laminates and/or panels assembled in the PRC consisting of crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this investigation are modules, laminates and/or panels assembled in the PRC, consisting of crystalline silicon photovoltaic cells, not exceeding 10,000mm ^{2} in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one module, laminate and/or panel is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all modules, laminates and/or panels that are integrated into the consumer good. Further, also excluded from the scope of this investigation are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, laminates and/or panels, from the PRC.[13]

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Issues and Decision Memorandum. A list of the issues which the parties raised and to which the Department responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and it is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes to the Margin Calculations Since the Preliminary Determination

Based on the Department's analysis of the comments received and our findings at verification, we made certain changes to the margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum, the company-specific analysis and surrogate value memoranda, and the separate rate calculation memorandum, all dated concurrently with this notice.

Verification

As provided in section 782(i) of the Act and 19 CFR 351.307(b)(1)(i), in August 2014, the Department verified the information submitted by Trina Solar and Renesola/Jinko for use in the final determination. The Department used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Trina Solar and Renesola/Jinko.

Final Determination Margins

The Department determines that the following weighted-average dumping margins exist for the period April 1, 2013 through September 30, 2013.

[11] *Preliminary Determination,* 79 FR 44901–44902.

[12] *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 77 FR 63788 (October 17, 2012) (''crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC'').

[13] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012).

Exporter	Producer	Weighted-average dumping margin (percent)
Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science & Technology Co., Ltd.	Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science & Technology Co., Ltd.	26.71
Renesola Jiangsu Ltd./Renesola Zhejiang Ltd./Jinko Solar Co. Ltd./Jinko Solar Import and Export Co., Ltd.	Renesola Jiangsu Ltd./Jinko Solar Co. Ltd.	78.42
Anji DaSol Solar Energy Science & Technology Co., Ltd.	Anji DaSol Solar Energy Science & Technology Co., Ltd.	52.13
Asun Energy Co., Ltd. (a/k/a Suzhou Asun Energy Co., Ltd.)	Asun Energy Co., Ltd. (a/k/a Suzhou Asun Energy Co., Ltd.)	52.13
Baoding Tianwei Yingli New Energy Resources Co. , Ltd.	Baoding Tianwei Yingli New Energy Resources Co., Ltd., Yingli Energy (China) Co., Ltd., and Lixian Yingli New Energy Co., Ltd..	52.13
BYD (Shangluo) Industrial Co., Ltd.	BYD (Shangluo) Industrial Co., Ltd.	52.13
Canadian Solar International Limited	Canadian Solar Manufacturing (Luoyang) Inc., Canadian Solar Manufacturing (Changshu), Inc.	52.13
Canadian Solar Manufacturing (Changshu), Inc	Canadian Solar Manufacturing (Changshu), Inc	52.13
Canadian Solar Manufacturing (Luoyang) Inc	Canadian Solar Manufacturing (Luoyang) Inc	52.13
CEEG Nanjing Renewable Energy Co., Ltd.	CEEG Nanjing Renewable Energy Co., Ltd.	52.13
Changzhou Almaden Co., Ltd.	Changzhou Almaden Co., Ltd.	52.13
Chint Solar (Zhejiang) Co., Ltd.	Chint Solar (Zhejiang) Co., Ltd.	52.13
ET Solar Industry Limited	ET Solar Industry Limited	52.13
Hainan Yingli New Energy Resources Co. Ltd.	Hainan Yingli New Energy Resources Co. Ltd.	52.13
Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	52.13
Hanwha SolarOne (Qidong) Co., Ltd.	Hanwha SolarOne (Qidong) Co., Ltd.	52.13
Hanwha SolarOne Hong Kong Limited	Hanwha SolarOne (Qidong) Co., Ltd.	52.13
Hefei JA Solar Technology Co., Ltd.	Hefei JA Solar Technology Co., Ltd.	52.13
Hengdian Group DMEGC Magnetics Co., Ltd.	Hengdian Group DMEGC Magnetics Co., Ltd.	52.13
Hengshui Yingli New Energy Resources Company Limited	Hengshui Yingli New Energy Resources Company Limited	52.13
Jiangyin Hareon Power Co., Ltd.	Jiangyin Xinhui Solar Co., Ltd.; Altusvia Energy Taicang Co., Ltd.; Hareon Solar Technology Co., Ltd..	52.13
Jiawei Solarchina Co., Ltd.	Jiawei Solarchina (Shenzhen) Co., Ltd.	52.13
Jiawei Technology (HK) Ltd.	Shenzhen Jiawei Photovoltaic Lighting Co. Ltd.	52.13
LDK Solar Hi-Tech (Nanchang) Co., Ltd.	LDK Solar Hi-Tech (Nanchang) Co., Ltd.	52.13
Lixian Yingli New Energy Company Ltd.	Lixian Yingli New Energy Company Ltd.	52.13
MOTECH (Suzhou) Renewable Energy Co., Ltd.	MOTECH (Suzhou) Renewable Energy Co., Ltd.	52.13
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	Ningbo Qixin Solar Electrical Appliance Co., Ltd.	52.13
Perlight Solar Co., Ltd.	Perlight Solar Co., Ltd.	52.13
Risen Energy Co., Ltd.	Risen Energy Co., Ltd.	52.13
Shanghai JA Solar Technology Co., Ltd.	Shanghai JA Solar Technology Co., Ltd.	52.13
Shanghai Solar Energy Science & Technology Co., Ltd.	Lianyungang Shenzhou New Energy Co., Ltd.	52.13
Shenzhen Jiawei Photovoltaic Lighting Co. Ltd.	Shenzhen Jiawei Photovoltaic Lighting Co. Ltd.	52.13
Shenzhen Sungold Solar Co., Ltd.	Shenzhen Sungold Solar Co., Ltd.	52.13
Shenzhen Topray Solar Co., Ltd.	Shenzhen Topray Solar Co., Ltd.	52.13
Sun Earth Solar Power Co., Ltd.	Sun Earth Solar Power Co., Ltd.	52.13
Sunny Apex Development Ltd.	Shenzhen Jiawei Photovoltaic Lighting Co. Ltd., Wuhan FYY Technology Co., Ltd..	52.13
SunPower Systems SARL	SunEnergy (S.Z.) Co., Ltd.	52.13
tenKsolar (Shanghai) Co., Ltd.	tenKsolar (Shanghai) Co., Ltd.	52.13
Upsolar Global Co., Ltd. and including Upsolar Group, Co., Ltd..	Shandong Dahai Group Co. Ltd.	52.13
Wanxiang Import & Export Co., Ltd.	Zhejiang Wanxiang Solar Co., Ltd.	52.13
Wuhan FYY Technology Co., Ltd.	Wuhan FYY Technology Co., Ltd.	52.13
Wuxi Suntech Power Co., Ltd.	Wuxi Suntech Power Co., Ltd.	52.13
Yingli Energy (China) Company Limited	Yingli Energy (China) Company Limited, Baoding Tianwei Yingli New Energy Resources Co., Ltd. and Lixian Yingli New Energy Co., Ltd..	52.13
Yingli Green Energy International Trading Limited	Yingli Energy (China) Company Limited, Baoding Tianwei Yingli New Energy Resources Co., Ltd., and Hainan Yingli New Energy Resources Co., Ltd..	52.13
Zhongli Talesun Solar Co., Ltd.	Zhongli Talesun Solar Co., Ltd.	52.13
PRC-Wide Rate		165.04

PRC-Wide Entity

Consistent with the *Preliminary Determination,* the PRC-wide entity includes, among other companies, CSG PVTech Co., Ltd.; Lianyungang Shenzhou New Energy Co., Ltd.; Lightway Green New Energy Co., Ltd.; SunEnergy (S.Z.) Co., Ltd.; SunPower Corporation (U.S.); Jiawei Solarchina (Shenzhen) Co., Ltd.; and Sumec Hardware & Tools Co., Ltd. We found these companies either have not demonstrated an absence of *de facto* government control, or did not have a sales transaction during the POI that provided a basis for granting separate rate status.[14]

[14] *See* the memorandum from Jeff Pedersen, Senior International Trade Analyst, Office IV, AD/CVD Operations to Abdelali Elouaradia, Director,

Continued

The PRC-wide entity also includes 35 PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department's request for information.[15] These companies withheld necessary information, failed to provide information by the established deadlines, and significantly impeded this proceeding by not submitting the requested quantity and value information within the meaning of sections 776(a)(1) and (a)(2)(A)–(C) of the Act, and further, failed to cooperate by not acting to the best of their ability to comply with the Department's requests for information within the meaning of section 776(b) of the Act. Therefore, we are continuing to apply adverse facts available to the PRC-wide entity. *See* Issues and Decision Memorandum for further discussion.

Disclosure

We intend to disclose to parties the calculations performed in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Separate Rate

The rate assigned to companies granted separate rate status that were not individually examined is normally determined based on the weighted-average of the estimated dumping margins calculated for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on facts available (FA).[16] In this investigation, we calculated above *de minimis* estimated weighted-average dumping margins that are not based on total FA for the two mandatory respondents, Trina Solar and Renesola/Jinko. Because we individually examined two companies in this investigation, basing the estimated dumping margin for the companies not individually examined on a weighted-average of the dumping margins for the two individually examined companies risks disclosure of business proprietary information (BPI). Therefore, we calculated both a weighted-average of the dumping margins calculated for the two mandatory respondents using public values for their sales of subject merchandise and a simple average of these two dumping margins, and selected, as the separate rate, the average that provides a more accurate proxy for the weighted-average margin of both companies calculated using BPI.[17]

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of certain solar products from the PRC as described in the ''Scope of the Investigation'' section, which were entered, or withdrawn from warehouse, for consumption on or after July 31, 2014, the date of publication in the **Federal Register** of the notice of an affirmative preliminary determination that certain solar products are being, or are likely to be, sold in the United States at LTFV. Further, consistent with our practice, where the product from the PRC under investigation is also subject to a concurrent countervailing duty (CVD) investigation, the Department will instruct CBP to require a cash deposit[18] equal to the weighted-average amount by which the normal value exceeds U.S. price, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through.[19] The cash deposit rates, before any adjustments for export subsidies and estimated domestic subsidy pass-through,[20] are as follows: (1) For each exporter/producer combination listed in the table above, the cash deposit rate will be equal to the dumping margin listed for that exporter/producer combination in the table; (2) for all other combinations of PRC exporters/producers of the merchandise under consideration, the cash deposit rate will be equal to the dumping margin established for the PRC-wide entity; and (3) for all non-PRC exporters of the merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be equal to the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we notified the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that such injury does not exist, this proceeding with be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instructions by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of propriety information

Office IV AD/CVD Operations regarding ''Companies Not Receiving a Separate Rate,'' dated July 24, 2014; *see also* Comments 7 and 8 of the Issues and Decision Memorandum.

[15] Those companies are: Beijing Hope Industry, China Sunergy, CNPV, EGing, ENN Solar Energy, Era Solar, Goldpoly (Quanzhou), Himin Holdings, Jetion, Jia Yi Energy Technology, Jiasheng Photovoltaic Tech., Jiutai Energy, Komaes Solar, Leye Photovoltaic Science Tech., Magi Solar Technology, Perfectenergy, Polar Photovoltaics, Qiangsheng (QS Solar), Refine Solar, Risun Solar (JiangXi Ruijing Solar Power Co., Ltd.), Shanghai Chaori Solar Energy, Shangpin Solar, Shanshan Ulica, Shenglong PV-Tech, Shenzhen Global Solar Energy Tech., Shuqimeng Energy Tech, Skybasesolar, Solargiga Energy Holdings Ltd., Sopray Solar, Sunlink PV, Tianjin Jinneng Solar Cell, Topsolar, Trony, Weihai China Glass Solar, and Yuhan Sinosola. For an additional 12 PRC exporters and/or producers of merchandise that were named in the Petition, the Department issued a questionnaire, but did not receive confirmation of delivery. Those companies are: Aiko Solar, Best Solar Hi-tech, Dai Hwa Industrial, Eoplly New Energy, Golden Partner development, Innovosolar, Jiangxi Green Power Co. Ltd., Sanjing Silicon, Sunflower, Sunvim Solar Technology, Yunnan Tianda, and Yunnan Zhuoye Energy. *See* memorandum to the file from Erin Kearney, International Trade Analyst, Office 4, AD/CVD Operations on the subject ''Delivery of Quantity and Value Questionnaires'' dated March 12, 2014.

[16] *See* section 735(c)(5)(A) of the Act.

[17] *See* the December 15, 2014, memorandum from Jeff Pedersen to the File entitled ''Calculation of the Final Margin for Separate Rate Recipients.''

[18] *See* Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

[19] *See* sections 772(c)(1)(C) and 777A(f) of the Act.

[20] With respect to a final affirmative countervailing duty determination in the companion investigation, because the provisional measures period has expired, Commerce will only order the resumption of the suspension of liquidation, and require cash deposits for countervailing duties equal to the final subsidy rates, if the U.S. International Trade Commission issues a final affirmative injury determination. In the event of a final affirmative injury determination, the Department will make an adjustment to AD cash deposits where appropriate for export subsidies and estimated domestic subsidy pass-through.

disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 15, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Separate Rate Companies
V. Use of Adverse Facts Available
VI. Discussion of the Issues
Comment 1. Scope of the Investigation
Comment 2. Whether to Select South Africa or Thailand as the Primary Surrogate Country
Comment 3. Whether to Offset the Cash Deposit Rate for Export Subsidies
Comment 4. Whether the Department Should Investigate the Effects of the GOC's Alleged Cyberhacking on this Investigation
Comment 5. Ultimate Ownership of Separate Rate Applicants
Comment 6. Separate Rate Applicants with Managers or Board Members with Ties to the Chinese Government
Comment 7. Separate Rate Status of Lianyungang Shenzhou New Energy Co., Ltd.
Comment 8. Separate Rate Status of Sumec Hardware & Tools Co., Ltd.
Comment 9. The Appropriate Surrogate Value for Aluminum Frames
Comment 10. The Appropriate Surrogate Value for Scrap Solar Cells
Comment 11. Unpaid Sales
Comment 12. Quality Insurance
Comment 13. Warranty Costs
Comment 14. Incorrect Allocation of Indirect Material, Labor, and Electricity Consumption
Comment 15. Whether to Base Renesola/Jinko's Dumping Margin on Partial AFA
Comment 16. Whether to Collapse Jinko and Renesola
Comment 17. Whether to Use Market-Economy Purchase Prices to Value all of Renesola/Jinko's Solar Cells
Comment 18. Whether to Adjust Renesola/Jinko's Cash Deposit Rate by the Full Amount of Domestic Subsidies
Comment 19. Separate Rate Application of tenKsolar
VII. Recommendation

[FR Doc. 2014–30092 Filed 12–22–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD660

Takes of Marine Mammals Incidental to Specified Activities; Seabird and Pinniped Research Activities in Central California, 2015–2016

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: We, NMFS, have received an application from Point Blue Conservation Science (Point Blue) requesting an Incidental Harassment Authorization (Authorization) to take marine mammals, by harassment, incidental to conducting proposed seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California from January 2015 through January 2016. Per the Marine Mammal Protection Act, we are requesting comments on our proposal to issue an Authorization to Point Blue to incidentally harass, by Level B harassment only, four species of marine mammals during the year-long monitoring project.

ADDRESSES: Address comments on the application to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Cody@noaa.gov.* You must include 0648–XD660 in the subject line. We are not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for email comments sent to addresses other than the one provided here.

Instructions: All submitted comments are a part of the public record and NMFS will post them to *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To obtain an electronic copy of the application, a list of the references used in this document, and Point Blue's Authorization request, visit the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm.*

NMFS prepared an Environmental Assessment (EA) in 2014 titled ''Issuance of an Incidental Harassment Authorization to Point Blue Conservation Science and Partners to Take Marine Mammals by Harassment Incidental to Seabird and Pinniped Research Conducted in Central California.'' We provided relevant environmental information to the public through a notice for a previous proposed authorization (78 FR 66686, November 6, 2013) and considered public comments received in response prior to finalizing our EA.

At that time, NMFS concluded that issuance of an annual Authorization would not significantly affect the quality of the human environment and issued a Finding of No Significant Impact (FONSI) regarding issuing an Authorization for Point Blue's 2014–2015 seabird research activities. In conjunction with Point Blue's 2015–2016 application, NMFS will review the 2014 EA to determine whether supplementation is necessary. Information from Point Blue's application, NMFS' 2014 EA, and this notice collectively provide the environmental information related to a proposed issuance of the Authorization for public review and comment. An electronic copy of the EA for this activity is available upon request (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

Through the authority delegated by the Secretary, NMFS shall grant an Authorization for the incidental taking of small numbers of marine mammals if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant).

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On July 30, 2014, NMFS received an application from Point Blue requesting the taking by harassment of small numbers of marine mammals incidental to conducting seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California. Point Blue, along with partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore, plan to conduct the proposed activities for one year. These partners are conducting this research under cooperative agreements with the U.S. Fish and Wildlife Service in consultation with the Gulf of the Farallones National Marine Sanctuary. We determined the application complete and adequate on December 7, 2014.

Their proposed research activities would involve monitoring and censusing seabird colonies; observing seabird nesting habitat; restoring nesting burrows; and resupplying a field station. The proposed activities would occur in the vicinity of pinniped haul out sites located on Southeast Farallon Island (37°41′54.32″ N; 123°0′8.33″ W), Año Nuevo Island (37°6′29.25″ N; 122°20′12.20″ W), or within Point Reyes National Seashore (37°59′38.61″ N; 122°58′24.90″ W) in central California.

Acoustic and visual stimuli including: (1) Noise generated by motorboat approaches and departures; (2) noise generated during the resupplying of the field station; and (3) human presence during seabird and pinniped research activities, have the potential to cause California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) hauled out on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore to flush into the surrounding water or to cause a short-term behavioral disturbance for marine mammals in the proposed areas. These types of disturbances are the principal means of marine mammal taking associated with these activities. Point Blue has requested an authorization to take 10,092 California sea lions, 526 harbor seals, 261 northern elephant seals, and 185 Steller sea lions (*Eumetopias jubatus*) by Level B harassment only.

To date, we have issued six 1-year Incidental Harassment Authorizations to Point Blue for the conduct of the same activities from 2007 to 2015. The current Authorization expires on January 30, 2015 (79 FR 6184, February 3, 2014). This is the organization's seventh request for an Authorization and they will submit a monitoring report to us no later than 90 days after the expiration of the current Authorization.

Description of the Specified Geographic Region

The proposed action area consists of the following three locations in the northeast Pacific Ocean:

South Farallones Islands

The South Farallon Islands consist of Southeast Farallon Island located at 37°41′54.32″ N; 123° 0′8.33″ W and West End Island. These two islands are directly adjacent to each other and separated by only a 30-foot (ft) (9.1 meter (m)) channel. The South Farallon Islands have a land area of approximately 120 acres (0.49 square kilometers (km)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, CA, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary.

Año Nuevo Island

Año Nuevo Island located at 37° 6′29.25″ N; 122°20′12.20″ W is one-quarter mile (402 m) offshore of Año Nuevo Point in San Mateo County, CA. This small 25-acre (0.1 square km) island is part of the Año Nuevo State Reserve, all of which is owned and operated by California State Parks. The Island lies within the Monterey Bay National Marine Sanctuary and the Año Nuevo State Marine Conservation Area.

Point Reyes National Seashore

Point Reyes National Seashore located is approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones National Marine Sanctuary. The proposed research areas (Life Boat Station, Drakes Beach, and Point Bonita) are within the headland coastal areas of the National Park.

Description of the Specified Activity

Seabird Research on Southeast Farallon Island

Point Blue proposes to conduct: (1) Daily observations of seabird colonies at a maximum frequency of three 15-minute visits per day; and (2) conduct daily observations of breeding common murres (*Uria aalge*) at a maximum frequency of one, 5-hour visit per day in September. These activities usually involve one or two observers conducting daily censuses of seabirds or conducting mark/recapture studies of breeding seabirds on Southeast Farallon Island. The researchers plan to access the island's two landing areas, the North Landing and the East Landing, by 14 to 18 ft (4.3 to 5.5 m) open motorboats which are hoisted onto the island using a derrick system and then travel by foot to coastal areas of the island to view breeding seabirds from behind an observation blind.

The potential for incidental take related to the mark/recapture studies is very low as these activities are conducted within the interior of the island away from the intertidal areas where the pinnipeds haul out. Most potential for incidental take would occur when the researchers approach or depart the intertidal area by motorboat or when the researchers walk within 50 ft (15.2 m) of the haulout areas to enter the observation blinds to observe shorebirds.

Field Station Resupply on Southeast Farallon Island

Point Blue proposes to resupply the field station once every two weeks at a maximum frequency of 26 visits. Resupply activities involve personnel approaching either the North Landing or East Landing by motorboat. At East Landing–the primary landing site–all personnel assisting with the landing would stay on the loading platform approximately 30 ft (9.1 m) above the water. At North Landing, loading operations would occur at the water level in the intertidal areas. Most potential for incidental take would occur when the researchers approach the area by motorboat or when the

researchers load or unload supplies onshore.

Seabird Research on Año Nuevo Island

Point Blue and its partners propose to monitor seabird burrow nesting habitat quality and to conduct habitat restoration at a maximum frequency of 20 visits per year. This activity involves two to three researchers accessing the north side of the island by a 12 ft (3.7 m) Zodiac boat. Once onshore, the researchers will check subterranean nest boxes and restore any nesting habitat for approximately 15 minutes.

Most potential for incidental take would occur at the landing beach on the north side of the island when the researchers arrive and depart to check the boxes. Non-breeding pinnipeds may occasionally be present, including California sea lions that may be hauled out near a small group of subterranean seabird nest boxes on the island terrace. In both locations researchers will be more than 50 ft (15.2 m) away from any potentially hauled out pinnipeds.

Seabird Research on Point Reyes National Seashore

The National Park Service in collaboration with Point Blue monitors seabird breeding and roosting colonies; conducts habitat restoration; removes non-native plants; monitors intertidal areas; and maintains coastal dune habitat. Seabird monitoring usually involves one or two observers conducting the survey by small boats (12 to 22 ft; 3.6 to 6.7 m) along the Point Reyes National Seashore shoreline. Researchers would visit the site at a maximum frequency of 20 times per year, with an emphasis on increasing monitoring during the nesting season. Researchers would conduct occasional, intermittent visits during the rest of the year.

A majority of the research occurs in areas where marine mammals are not present. However, the potential for incidental harassment will occur at the landing beaches along Point Reyes Headland, boat ramps, or parking lots where northern elephant seals, harbor seals, or California sea lions may be hauled out in the vicinity.

NMFS expects that acoustic and visual stimuli resulting from the proposed motorboat operations and human presence has the potential to harass marine mammals. NMFS also expects that these disturbances would be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

Description of the Marine Mammals in the Area of the Proposed Specified Activity

The marine mammals most likely to be harassed incidental to conducting seabird research at the proposed research areas on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore are primarily California sea lions, northern elephant seals, Pacific harbor seals, and to a lesser extent the eastern distinct population segment (DPS) of the Steller sea lion. NMFS presents general information on these species in the next section. NMFS refers the public to Carretta *et al.* (2014) and Allen and Angliss (2014) for additional information on the status, distribution, seasonal distribution, and life history of these species. The publications are available on the Internet at: *http://www.nmfs.noaa.gov/pr/sars/pdf/pacific2013_final.pdf* and *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2013_final.pdf*.

Northern Elephant Seal

Northern elephant seals are not listed as threatened or endangered under the Endangered Species Act, nor are they categorized as depleted under the Marine Mammal Protection Act. The estimated population of the California Breeding Stock is approximately 124,000 animals and the maximum population growth rate is 11.7 percent (Carretta *et al.,* 2014).

Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska and as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 1,000 to 2,500 ft (330–800 m) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.,* 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south, south of 45° N (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

At Point Reyes, the population ranges from 1,500 and 2,000 animals (NPS, 2013a). Adult northern elephant seals visit Point Reyes twice a year (NPS, 2013a). They arrive in early winter from their feeding grounds off Alaska and the largest congregations occur in the winter, when the females arrive to deliver their pups and nurse them, and in spring when immature seals and adult females return to molt. During the time they are onshore they are fasting (NPS, 2013b).

At Southeast Farallon, the population consists of approximately 500 animals (FNMS, 2013). Northern elephant seals began recolonizing the South Farallon Islands in the early 1970s (Stewart *et al.,* 1994) at which time the colony grew rapidly. In 1983 a record 475 pups were born on the South Farallones (Stewart *et al.,* 1994). Since then, the size of the South Farallones colony has declined, stabilizing in the early 2000s and then declining further over the past six years (USFWS, 2013). In 2012, a total of 90 cows were counted on the South Farallones, and 60 pups were weaned (USFWS, 2013). Point Blue's average monthly counts from 2000 to 2009 ranged from 20 individuals in July to nearly 500 individuals in November (USFWS, 2013).

Northern elephant seals are present on the islands and in the waters surrounding the South Farallones year-round for either breeding or molting; however, they are more abundant during breeding and peak molting seasons (Le Boeuf and Laws 1994, Sydeman and Allen, 1997). They live and feed in deep, offshore waters the remainder of the year.

In mid-December, adult males begin arriving on the South Farallones, closely followed by pregnant females on the verge of giving birth. Females give birth to a single pup, generally in late December or January (Le Boeuf and Laws, 1994) and nurse their pups for approximately four weeks (Reiter *et al.,* 1978). Upon pup weaning, females mate with an adult male and then depart the islands. The last adult breeders depart the islands in mid-March. The spring peak of elephant seals on the rookery occurs in April, when females and immature seals (approximately one to four years old) arrive at the colony to molt (a one month process) (USFWS, 2013). The year's new pups remain on the island throughout both of these peaks, generally leaving by the end of April (USFWS, 2013).

The lowest numbers of elephant seals present on the rookery occurs during June, July, and August, when sub-adult and adult males molt. Another peak of young seals return to the rookery for a

haul-out period in October, and at that time some individuals undergo partial molt (Le Boeuf and Laws, 1994). At Año Nuevo Island the population ranges from 900 to 1,000 adults.

Observers first sighted elephant seals on Año Nuevo Island in 1955 and today the population ranges from 900 to 1,000 adults (M. Lowry, unpubl. data). Males began to haul out on the mainland in 1965. California State Park reports that by 1988/1989, approximately 2,000 elephant seals came ashore to Año Nuevo (CSP, 2012).

California Sea Lion

California sea lions are not listed as threatened or endangered under the Endangered Species Act, nor are they categorized as depleted under the Marine Mammal Protection Act. The California sea lion is now a full species, separated from the Galapagos sea lion (*Z. wollebaeki*) and the extinct Japanese sea lion (*Z. japonicus*) (Brunner 2003, Wolf *et al.,* 2007, Schramm *et al.,* 2009). The estimated population of the U.S. stock of California sea lion is approximately 296,750 animals and the current maximum population growth rate is 12 percent (Carretta *et. al.,* 2014).

California sea lion breeding areas are on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. During the breeding season, most California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et. al.,* 2014). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately four to five days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between four and 10 months of age (NMML, 2010).

Adult and juvenile males will migrate as far north as British Columbia, Canada while females and pups remain in southern California waters in the non-breeding season. In warm water (El Niño) years, some females are found as far north as Washington and Oregon, presumably following prey.

The U.S. stock of California sea lion is the only stock present in the proposed research area and in recent years, California sea lions have begun to breed annually in small numbers at Southeast Farallon and Año Nuevo Islands.

On the Farallon Islands, California sea lions haul out in many intertidal areas year round, fluctuating from several hundred to several thousand animals. California sea lions at Point Reyes National Seashore haul out at only a few locations, but will occur on human structures such as boat ramps. The annual population averages around 300 to 500 during the fall through spring months, although on occasion, several thousand sea lions can arrive depending upon local prey resources (S. Allen, unpublished data). On Año Nuevo Island, California sea lions may haulout at one of eight beach areas on the perimeter of the island (see Figure 2 in the Application). The island's average population ranges from 4,000 to 9,500 animals (M. Lowry, unpublished data).

Pacific Harbor Seal

Pacific harbor seals are not listed as threatened or endangered under the Endangered Species Act, nor are they categorized as depleted under the Marine Mammal Protection Act. The estimated population of harbor seals is 30,196 animals (Carretta *et. al.*, 2014).

The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: *P.* v. *stejnegeri* in the western North Pacific, near Japan, and *P.* v. *richardsi* in the northeast Pacific Ocean. The latter subspecies, recognized as three separate stocks, inhabits the west coast of the continental United States, including: The outer coastal waters of Oregon and Washington states; Washington state inland waters; and Alaska coastal and inland waters.

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et. al.*, 2005). Harbor seals mate at sea and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations and rookery size varies from a few pups to many hundreds of pups.

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.*, 2005). On the Farallon Islands, approximately 40 to 120 Pacific harbor seals haul out in the intertidal areas (Point Blue unpublished data). Harbor seals at Point Reyes National Seashore haul out at nine locations with an annual population of up to 4,000 animals (M. Lowry, unpublished data). On Año Nuevo Island, harbor seals may haulout at one of eight beach areas on the perimeter of the island (see Figure 2 in Point Blue's Application) and the island's average population ranges from 100 to 150 animals (M. Lowry, unpublished data).

Steller Sea Lion

Steller sea lions consist of two distinct population segments: The western and eastern distinct population segments divided at 144° West longitude (Cape Suckling, Alaska). On October 23, 2013 NMFS found that the eastern distinct population segment of Steller sea lions has recovered. As a result of the finding, NMFS removed them from the list of threatened species under the ESA.

Steller sea lions range along the North Pacific Rim from northern Japan to California (Loughlin *et. al.*, 1984), with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands, respectively. The species is not known to migrate, but individuals disperse widely outside of the breeding season (late May through early July), thus potentially intermixing with animals from other areas.

The western segment of Steller sea lions inhabit central and western Gulf of Alaska, Aleutian Islands, as well as coastal waters and breed in Asia (*e.g.*, Japan and Russia). The eastern segment includes sea lions living in southeast Alaska, British Columbia, California, and Oregon.

In 2014, the estimated population of the eastern distinct population segment ranged from a minimum of 63,160 to 78,198 animals and the maximum population growth rate is 12.1 percent (Allen and Angliss, 2014).

The eastern distinct population segment of Steller sea lions breeds on rookeries located in southeast Alaska, British Columbia, Oregon, and California. There are no rookeries located in Washington state. Steller sea lions give birth in May through July and breeding commences a couple of weeks after birth. Pups are weaned during the winter and spring of the following year.

Despite the wide-ranging movements of juveniles and adult males in particular, exchange between rookeries by breeding adult females and males (other than between adjoining rookeries) appears low, although males have a higher tendency to disperse than females (NMFS, 1995; Trujillo *et al.*, 2004; Hoffman *et al.*, 2006). A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern

California and new rookeries established in southeastern Alaska (Pitcher *et al.*, 2007).

The current population of Steller sea lions in the proposed research area is estimated to number between 50 and 750 animals. Overall, counts of non-pups at trend sites in California and Oregon have been relatively stable or increasing slowly since the 1980s (Allen and Angliss, 2014).

Point Blue estimates that between 50 and 150 Steller sea lions live on the Farallon Islands. On Southeast Farallon Island, the abundance of females declined an average of 3.6 percent per year from 1974 to 1997 (Sydeman and Allen, 1999).

The National Marine Fisheries Service's Southwest Fisheries Science Center estimates between 400 and 600 live on Año Nuevo Island (Point Blue unpublished data, 2008; Southwest Fisheries Science Center unpublished data, 2008). At Año Nuevo Island off central California, a steady decline in ground counts started around 1970, and there was an 85 percent reduction in the breeding population by 1987 (LeBoeuf *et al.*, 1991).

Pup counts at Año Nuevo Island declined five percent annually through the 1990s (NOAA Stock Assessment, 2003), and have apparently stabilized between 2001 and 2005 (M. Lowry, SWFSC unpublished data). In 2000, the combined pup estimate for both islands was 349. In 2005, the pup estimate was 204 on the Island. Pup counts on the Farallon Islands have generally varied from five to 15 (Hastings and Sydeman, 2002; Point Blue unpublished data). Pups have not been born at Point Reyes Headland since the 1970s and Steller sea lions are seen in very low numbers there currently (S. Allen, unpublished data).

Other Marine Mammals in the Proposed Action Area

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the Endangered Species Act and categorized as depleted under the Marine Mammal Protection Act, usually range in coastal waters within two km of shore. Point Blue has not encountered California sea otters on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore during the course of seabird or pinniped research activities over the past five years. This species is managed by the U.S. Fish and Wildlife Service and is not considered further in this notice.

Potential Effects of the Specified Activities on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.*, human presence and vessel movement) impact marine mammals (via observations or scientific studies). This section may include a discussion of known effects that do not rise to the level of an MMPA take (for example, with acoustics, NMFS may include a discussion of studies of animals exhibiting no reaction to sound or exhibiting barely perceptible avoidance behaviors). This discussion may also include reactions that we consider to rise to the level of a take.

We intend to provide a background of potential effects of Point Blue's research activities in this section. This section does not consider the specific manner in which Point Blue would carry out the proposed activity, what mitigation measures Point Blue would implement, and how either of those would shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that we expect Point Blue to take during this activity. The ''Negligible Impact Analysis'' section will include the analysis of how the seabird research activities would impact marine mammals. NMFS will consider the content of the following sections: (1) Estimated Take by Incidental Harassment; (3) Proposed Mitigation; and (4) Anticipated Effects on Marine Mammal Habitat, to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals—and from that consideration—the likely impacts of this activity on the affected marine mammal populations or stocks.

Acoustic and visual stimuli generated by: (1) Motorboat operations; and (2) the appearance of researchers may have the potential to cause Level B harassment of any pinnipeds hauled out on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore. The effects of sounds from motorboat operations and the appearance of researchers might include hearing impairment or behavioral disturbance (Southall, *et al.*, 2007).

Hearing Impairment

Marine mammals produce sounds in various important contexts—social interactions, foraging, navigating, and responding to predators. The best available science suggests that pinnipeds have a functional aerial hearing sensitivity between 75 hertz (Hz) and 75 kilohertz (kHz) and can produce a diversity of sounds, though generally from 100 Hz to several tens of kHz (Southall, *et al.*, 2007).

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.*, the threshold returns to the pre-exposure value), it is called temporary threshold shift (Southall *et al.*, 2007).

Pinnipeds have the potential to be disturbed by airborne and underwater noise generated by the small boats equipped with outboard engines (Richardson, Greene, Malme, and Thomson, 1995). However, there is a dearth of information on acoustic effects of motorboats on pinniped hearing and communication and to our knowledge there has been no specific documentation of hearing impairment in free-ranging pinnipeds exposed to small motorboats during realistic field conditions.

Behavioral Disturbance

Disturbances resulting from human activity can impact short- and long-term pinniped haul out behavior (Renouf *et al.*, 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.*, 1984; Stewart, 1984; Suryan and Harvey, 1999; Mortenson *et al.*, 2000; and Kucey and Trites, 2006). Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Weilgart, 2007). If a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007).

Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.*, 1984;

Calambokidis *et al.*, 1991; Suryan and Harvey, 1999; and Mortenson *et al.*, 2000). The Hawaiian monk seal (*Monachus schauinslandi*) has been shown to avoid beaches that have been disturbed often by humans (Kenyon, 1972). And in one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon, 1962).

In 1997, Henry and Hammil (2001) conducted a study to measure the impacts of small boats (*i.e.*, kayaks, canoes, motorboats and sailboats) on harbor seal haulout behavior in Métis Bay, Quebec, Canada. During that study, the authors noted that the most frequent disturbances (n=73) were caused by lower speed, lingering kayaks and canoes (33.3 percent) as opposed to motorboats (27.8 percent) conducting high speed passes. The seal's flight reactions could be linked to a surprise factor by kayaks-canoes which approach slowly, quietly and low on water making them look like predators. However, the authors note that once the animals were disturbed, there did not appear to be any significant lingering effect on the recovery of numbers to their pre-disturbance levels. In conclusion, the study showed that boat traffic at current levels has only a temporary effect on the haulout behavior of harbor seals in the Métis Bay area.

In 2004, Johnson and Acevedo-Gutierrez (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haulout sites on Yellow Island, Washington state. The authors estimated the minimum distance between the vessels and the haul-out sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the seven-weekend study, the authors recorded 14 human-related disturbances which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m) respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that on average, the seals quickly recovered from the disturbances and returned to the haulout site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007).

As a general statement from the available information, pinnipeds exposed to intense (approximately 110 to 120 decibels re: 20 μPa) non-pulse sounds often leave haulout areas and seek refuge temporarily (minutes to a few hours) in the water (Southall *et al.*, 2007). Based on the available data, previous monitoring reports from Point Blue, and studies described here, we anticipate that any pinnipeds found in the vicinity of the proposed project could have short-term behavioral reactions to the noise attributed to Point Blue's motorboat operations and human presence related to the seabird research activities. We would expect the pinnipeds to return to a haulout site within 60 minutes of the disturbance (Allen *et al.*, 1985). The effects to pinnipeds appear at the most, to displace the animals temporarily from their haul out sites and we do not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of the proposed research. The maximum disturbance to Steller sea lions would result in the animals slowly flushing into the water in response to presence of the researchers.

No research activities would occur on pinniped rookeries. Breeding animals are concentrated in areas where researchers would not visit. Therefore, NMFS does not expect mother and pup separation or crushing of pups during flushing. In summary, NMFS does not anticipate that the proposed activities would result in the injury, serious injury, or mortality of pinnipeds because the timing of research visits would preclude separation of mothers and pups, as activities occur outside of the pupping/breeding areas.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections).

Anticipated Effects on Marine Mammal Habitat

NMFS does not expect the proposed research activities to have any habitat-related effects, including to marine mammal prey species, that could cause significant or long-term consequences for individual marine mammals or their populations. NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to noise generated by: (1) Motorboat approaches and departures; (2) human presence during restoration activities and loading operations while resupplying the field station; and (3) human presence during seabird and pinniped research activities. NMFS considers this impact to habitat as temporary and reversible and considered this aspect in more detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

Point Blue has based the mitigation measures which they will implement during the proposed research, on the following: (1) Protocols used during previous Point Blue seabird research activities as required by our previous authorizations for these activities; and (2) recommended best practices in Richardson *et al.* (1995).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Point Blue and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Postpone beach landings on Año Nuevo Island until pinnipeds that may be present on the beach have slowly entered the water.

(2) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed.

(3) Avoid visits to sites used by pinnipeds for pupping.

(4) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinas orca*) are present. If Point Blue and/or its designees see predators in the area,

they must not disturb the animals until the area is free of predators.

(5) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(6) Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(7) Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(8) Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and coordinate research goals for Año Nuevo Island to minimize the number of trips to the island.

(9) Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

(10) Have the lead biologist serve as an observer to evaluate incidental take.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we have prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS' evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, we expect that the successful implementation of the measure would minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of Point Blue's proposed measures, we have preliminarily determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the Marine Mammal Protection Act states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Act's implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an incidental take authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned later;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of potential stressor(s) associated with the action (*e.g.*, sound or visual stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

As part of its 2015–2016 application, Point Blue proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the incidental harassment authorization. The Point Blue researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

Point Blue has complied with the monitoring requirements under the previous authorizations for the 2007 through 2014 seasons. The results from previous Point Blue's monitoring reports support our findings that the proposed mitigation measures, which we also required under the 2007–2014 Authorizations provide the means of effecting the least practicable adverse impact on the species or stock.

Point Blue will submit a monitoring report on the January 31, 2014 through

January 30, 2015 research period by April 2015. Upon receipt and review, we will post this annual report on our Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm*.

Proposed Reporting

Point Blue must submit a draft final report to NMFS' Office of Protected Resources within 60 days after the conclusion of the 2016 field season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the Authorization.

Point Blue will submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, within 30 days after receiving comments from NMFS on the draft final report. If Point Blue does not receive any comments from NMFS on the draft report, NMFS and Point Blue will consider the draft final report to be the final report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

NMFS proposes to authorize take by Level B harassment only for the proposed seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Acoustic (*i.e.,* increased sound) and visual stimuli generated during these proposed activities may have the potential to cause marine mammals in the harbor area to experience temporary, short-term changes in behavior.

Based on Point Blue's previous research experiences, with the same activities conducted in the proposed research area, and on marine mammal research activities in these areas, we estimate that approximately 9,871 California sea lions, 343 harbor seals, 196 northern elephant seals, and 106 Steller sea lions could be affected by Level B behavioral harassment over the course of the effective period of the proposed Authorization.

The authorized take differs from Point Blue's original request for California sea lions (10,092), northern elephant seals (261), harbor seals (526) and Steller sea lions (185). NMFS bases these new estimates on historical data from previous monitoring reports and anecdotal data for the same activities conducted in the proposed research area. In brief, for each species, we created a statistical model to derive an estimate of the average annual increase of reported take based on a best fit regression analysis (*i.e.,* linear or polynomial regression) of reported take from 2007 to 2013. Next, we added the predicted annual increase in take to a baseline of take reported for 2013–2014 season to project the estimated take for each species for the 2015–2016 Authorization. We carried through the same predicted annual increase in take for future Authorizations (2014–2017) to obtain a mean projected take for each species. Last, we analyzed the reported take for each activity by calculating the upper bound of the 99 percent confidence interval of the mean reported take (2007–2013) and mean projected take (2014–2017) for each species. Our use of the upper confidence interval represents the best available information that supports our precautionary deliberation of how much take could occur annually.

There is no evidence that Point Blue's planned activities could result in injury, serious injury or mortality within the action area. Moreover, the required mitigation and monitoring measures will minimize further any potential risk for injury, serious injury, or mortality. Thus, we do not propose to authorize any injury, serious injury or mortality. We expect all potential takes to fall under the category of Level B harassment only.

Encouraging and Coordinating Research

Point Blue will continue to coordinate monitoring of pinnipeds during the research activities occurring on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Point Blue conducts bone fide research on marine mammals, the results of which may contribute to the basic knowledge of marine mammal biology or ecology, or are likely to identify, evaluate, or resolve conservation problems.

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' The lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population level effects) forms the basis of a negligible impact finding.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, feeding, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

In making a preliminary negligible impact determination, we consider:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment;

(3) The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document and based on the following factors, NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance, abandonment of the haulout area, injury, serious injury, or mortality:

(1) The effects of the pinniped and seabird research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

(2) The availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Point Blue conducted their pinniped and research activities.

(3) There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers must delay ingress into the

landing areas until after the pinnipeds present have slowly entered the water.

(4) The limited access of Point Blue's researchers to Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore during the pupping season.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Point Blue's proposed activities, and we do not propose to authorize injury, serious injury or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area that is surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual monitoring counts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that the total marine mammal take from Point Blue's seabird research activities will not adversely affect annual rates of recruitment or survival and therefore will have a negligible impact on the affected species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that four species of marine mammals could be potentially affected by Level B harassment over the course of the proposed Authorization. For each species, these numbers are small numbers (each, less than or equal to two percent) relative to the population size. These incidental harassment numbers represent approximately 3.33 percent of the U.S. stock of California sea lion, 1.74 percent of the California stock of Pacific harbor seal, 0.16 percent of the California breeding stock of northern elephant seal, and 0.17 percent of the eastern distinct population segment of Steller sea lion.

Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haulout sites the day the researchers are present.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires us to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals implicated by this action. Thus, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

On October 23, 2013 NMFS announced the removal of the eastern distinct population segment of Steller sea lions from the list of threatened species under the ESA. No marine mammal species listed under the ESA are anticipated to occur in the action area. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In 2014, we prepared an Environmental Assessment (EA) analyzing the potential effects to the human environment from NMFS' issuance of a proposed Authorization to Point Blue for their seabird research activities. In January 2014, NMFS issued a Finding of No Significant Impact (FONSI) on the issuance of an Authorization for Point Blue's research activities in accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). Point Blue's proposed activities and impacts for 2015–2016 are within the scope of the 2014 EA and FONSI. NMFS has reviewed the 2014 EA and determined that there are no new direct, indirect, or cumulative impacts to the human and natural environment associated with the Authorization requiring evaluation in a supplemental EA and NMFS, therefore, proposes to reaffirm the 2014 FONSI.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to Point Blue's seabird research activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The next section provides the proposed IHA language and contains a draft of the Authorization. The wording within this section is proposed for inclusion in the Authorization (if issued).

1. This Authorization is valid from January 31, 2015, through January 30, 2016.

2. This Authorization is valid only for specified activities associated with seabird research activities in the vicinity of pinniped haul out sites located on Southeast Farallon Island (37°41′54.32″ N, 123° 0′8.33″ W), Año Nuevo Island (37° 6′29.25″ N, 122°20′12.20″ W), within Point Reyes National Seashore (37°59′38.61″ N, 122°58′24.90″ W), San Francisco Bay, or the Russian River in Sonoma County.

3. Species Authorized and Level of Takes.

a. The taking, by Level B harassment only, is limited to the following species: 9,871 California sea lions (*Zalophus californianus*), 343 Pacific harbor seals (*Phoca vitulina*), 196 northern elephant seals (*Mirounga angustirostris*), and 106 Steller sea lions (*Eumetopias jubatus*).

b. The taking by injury (Level A harassment), serious injury or death of any of the species listed in Condition 3(a) or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of this Authorization.

c. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the West Coast Regional Administrator, National Marine Fisheries Service (NMFS), at (562) 980–4001 and to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401.

4. General Conditions.

a. A copy of this Authorization must be in the possession of Point Blue, its designees, and field crew personnel (including research collaborators from Point Reyes National Seashore and Oikonos—Ecosystem Knowledge) operating under the authority of this Authorization.

b. The holder must notify the Assistant Regional Administrator for Protected Resources, West Coast Region at (562) 982–4000 at least 24 hours prior to starting seabird research activities (unless constrained by the date of issuance of this Authorization).

5. Mitigation Measures.

In order to ensure the least practicable impact on the species listed in condition 3(a), the holder of this Authorization is required to:

a. Minimize the potential for disturbance (to the lowest level practicable near known pinniped haul outs by boat travel and pedestrian approach during pinniped and seabird research operations). Point Blue and its designees must:

• Postpone beach landings until pinnipeds that may be present in the access areas have entered the water.

• Select a pathway of approach to research sites that minimizes the number of marine mammals harassed.

• Avoid visits to sites used by pinnipeds for pupping.

• Monitor for offshore predators and not approach hauled out pinnipeds if great white sharks (Carcharodon carcharias) or killer whales (Orcinas orca) are in the area. If Point Blue and/or its designees see predators in the area, they must not disturb the animals until the area is free of predators.

• Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

• Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

• Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

• Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and coordinate research goals for Año Nuevo Island to minimize the number of trips to the island.

• Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

• Have the lead biologist serve as an observer to evaluate incidental take.

6. Monitoring.

The holder of this Authorization is required to:

a. Record the date, time, and location (or closest point of ingress) of each visit to the research site. See Table 2 for an example of a data collection sheet.

b. Collect the following information for each visit:

• Composition of the marine mammals sighted, such as species, gender and life history stage (*e.g.,* adult, sub-adult, pup);

• information on the numbers (by species) of marine mammals observed during the activities;

• the estimated number of marine mammals (by species) that may have been harassed during the activities;

• any behavioral responses or modifications of behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.,* pedestrian approach, vessel approach); and

• information on the weather, including the tidal state and horizontal visibility.

c. Observers will record marine mammal behavior patterns observed before, during, and after the activities; in the following manner:

• Flushing into the water;

• stampeding into water;

• moving more than 1 meter (m), but not in the water;

• becoming alert and moving, but did not move more than 1 m; or

• changing the direction of current movement.

d. If applicable, note observations of marked or tag-bearing pinnipeds or carcasses, as well as any rare or unusual species of marine mammal.

e. If applicable, note the presence of any offshore predators (date, time, number, species).

7. Reporting.

The holder of this Authorization is required to:

a. Report observations of unusual behaviors of pinnipeds to Monica DeAngelis, Fishery Biologist, West Coast Region at (562) 982–3232 so that the appropriate personnel in the Regional Office may conduct any potential follow-up observations.

b. Draft Report: Submit a draft final report to the Chief, Permits and Conservation Division, Office of Protected Resources, Headquarters, NMFS within 60 days after the expiration of the Authorization. The report will include the information gathered pursuant to the monitoring requirements listed in item 6, along with an executive summary.

c. The Draft Report shall be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the Final Report prior to submission to NMFS. If we decide that the draft final report needs no comments, the draft final report will be considered to be the final report.

d. Final Report: Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, Headquarters, NMFS within 30 days after receiving comments from us on the draft final report.

8. Reporting Prohibited Take.

In the unanticipated event that Point Blue's activities cause any taking of a marine mammal in a manner prohibited by the Authorization, such as an injury (Level A harassment), serious injury or mortality (*e.g.,* vessel-strike), Point Blue shall immediately cease the specified activities and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Assistant West Coast Regional Stranding Coordinator at (562) 980–3264 (*Justin.Greenman@noaa.gov*). The report must include the following information:

Time, date, and location (latitude/longitude) of the incident; the name and type of vessel involved; the vessel's speed during and leading up to the incident; description of the incident; water depth; environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved; the fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Point Blue shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Point Blue to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Point Blue may not resume their activities until notified by NMFS in writing via a letter or email or via the telephone.

9. Reporting an Injured or Dead Marine Mammal with an Unknown Cause of Death.

In the event that Point Blue discovers an injured or dead marine mammal, and the lead researcher determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Point Blue will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Assistant West Coast Regional Stranding Coordinator at (562) 980–3264 (*Justin.Greenman@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. NMFS will work with Point Blue to determine whether modifications to the activities are appropriate.

10. Reporting an Injured or Dead Marine Mammal not Related to Point Blue's Activities.

In the event that Point Blue discovers an injured or dead marine mammal, and the lead researcher determines that the injury or death is not associated with or related to the activities authorized in the

Authorization (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Point Blue will report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Assistant West Coast Regional Stranding Coordinator at (562) 980–3264 (*Justin.Greenman@noaa.gov*) within 24 hours of the discovery. Point Blue will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us and the Marine Mammal Stranding Network. Point Blue can continue their research activities.

11. A copy of this Authorization must be in the possession of Point Blue and its designees (including contractors and marine mammal monitors) operating under the authority of this Incidental Harassment Authorization at all times.

Request for Public Comments

NMFS requests comment on the analyses, the draft Authorization, and any other aspect of the Notice of Proposed Incidental Harassment Authorization for Point Blue's seabird research activities. Please include with your comments any supporting data or literature citations to help inform the final decision on Point Blue's request for an MMPA Authorization.

Dated: December 18, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–29991 Filed 12–22–14; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before January 22, 2015.

ADDRESSES: Comments may be submitted to OMB within 30 days of the notice's publication, identified by ''Privacy of Consumer Financial Information'' (OMB Control No. 3038–0055). Comments can be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, or sent by email to *OIRAsubmissions@omb.eop.gov,* and also mailed to Kathy Harman-Stokes, Chief Privacy Officer, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

Comments may also be submitted, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, identified by ''Privacy of Consumer Financial Information'' (OMB Control No. 3038–0055), by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier: Same as Mail, above.*
- *Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commodity Futures Trading Commission (''Commission'') to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 *et seq.* (2014).

FOR FURTHER INFORMATION CONTACT: Kathy Harman-Stokes, Chief Privacy Officer, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581; (202) 418–6629; FAX: (202) 418–5532; email: *kharman-stokes@cftc.gov,* and refer to OMB Control No. 3038–0055. This contact can also provide a copy of the ICR.

SUPPLEMENTARY INFORMATION:

Title: ''Privacy of Consumer Financial Information,'' OMB Control No. 3038–0055—Extension. This is a request for extension of a currently approved information collection.

Abstract: The passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), Public Law 111–203, 124 Stat. 1376 (2010), broadened the Commission's regulatory authority under the Gramm-Leach-Bliley Act (''GLB Act'') to cover two new entities: Swap Dealers and Major Swap Participants, in addition to Futures Commission Merchants, Commodity Trading Advisors, Commodity Pool Operators, and Introducing Brokers. Specifically, amendments to the GLB Act found in section 1093 of the Dodd-Frank Act, reaffirmed the Commission's authority to promulgate regulations to require entities that are subject to the Commission's jurisdiction to provide certain privacy protections for consumer financial information. These regulations were later extended to Retail Foreign Exchange Dealers.

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 the Commission's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on October 23, 2014 (79 FR 63384).

No comments have been received.

Burden statement: The respondent burden for this collection is estimated to average 0.24 hours per response.

Respondents/Affected Entities: 110.

Estimated number of responses: 20.

Estimated total annual burden on respondents: 528 hours.

Frequency of collection: Annual.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: December 18, 2014.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2014–30037 Filed 12–22–14; 8:45 am]

BILLING CODE 6351–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

Final Guidance for Effective Use of Programmatic NEPA Reviews

AGENCY: Council on Environmental Quality.

ACTION: Notice of Availability, Final Guidance for Effective Use of Programmatic NEPA Reviews.

SUMMARY: The Council on Environmental Quality (CEQ) is issuing its final guidance on programmatic National Environmental Policy Act (NEPA) reviews. This guidance provides clarification on when and how Federal agencies should use programmatic environmental analyses in accordance with NEPA, 42 U.S.C. 4332, and the CEQ Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500–1508. Guidance on programmatic NEPA reviews has been requested by the agencies and attention on programmatic NEPA reviews has increased as agencies undertake more broad landscape-scale analyses for proposals that affect the resources they manage. This guidance is designed to assist agency decisionmakers and the public in understanding the environmental impacts from proposed large-scope Federal actions and activities and to facilitate agency compliance with NEPA by clarifying the different planning scenarios under which an agency may prepare a programmatic, broad-scale, review. The guidance also addresses how agencies can prepare such reviews to ensure they are timely, informative, and useful for advancing decision-making. The goal of this guidance is to encourage a more consistent approach to programmatic NEPA reviews so that the analyses and documentation will allow for the expeditious and efficient completion of any necessary tiered reviews. It builds on previous guidance that explained the use of tiering and its place in the NEPA process.

DATES: The guidance is effective December 23, 2014.

ADDRESSES: The Final Guidance for Effective Use of Programmatic NEPA Reviews is available at White House Web site (*http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa*) and on the National Environmental Policy Act Web site (*www.nepa.gov*). Paper copies are available upon request by contacting the CEQ Associate Director for National Environmental Policy Act Oversight, 722 Jackson Place NW., Washington, DC 20503. Telephone: (202) 395–5750.

FOR FURTHER INFORMATION CONTACT: The Council on Environmental Quality (ATTN: Horst Greczmiel, Associate Director for National Environmental Policy Act Oversight), 722 Jackson Place NW., Washington, DC 20503. Telephone: (202) 395–5750.

SUPPLEMENTARY INFORMATION: Enacted in 1970, the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4370, is a fundamental tool used to harmonize our environmental, economic, and social aspirations and is a cornerstone of our Nation's efforts to protect the environment. NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before deciding to adopt proposals and take action.[1] NEPA environmental reviews (the analyses and documentation prepared under NEPA) may be on the project-specific or on broader programmatic level. The analyses in a programmatic NEPA review are valuable in setting out the broad view of environmental impacts and benefits for a proposed decision such as a rulemaking, or establishing a policy, program, or plan. That programmatic NEPA review (*e.g.,* Programmatic Environmental Assessment (EA), Programmatic Environmental Impact Statement (EIS)) can then be relied upon when agencies make decisions based on the programmatic EA or programmatic EIS, as well as decisions based on a subsequent (also known as tiered) NEPA review. Programmatic NEPA reviews should result in clearer and more transparent decision-making, as well as provide a better defined and more expeditious path toward decisions on proposed actions. This guidance clarifies the use of programmatic NEPA reviews by describing: (1) The nature of programmatic NEPA reviews; (2) when to use a programmatic and tiered NEPA review; (3) practical considerations for programmatic reviews and documents; (4) how to effectively conduct subsequent proposal-specific NEPA reviews; and (5) the lifespan of a programmatic NEPA document.

The **Federal Register** notice announcing the draft programmatic guidance and requesting public comments was published on August 22, 2014.[2] CEQ appreciates the thoughtful responses to its request for comments on the draft guidance. Commenters included private citizens, corporations, environmental organizations, trade associations, federal agencies, and state agencies. CEQ received twenty-eight public comments, which are available online at *www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/comments* and at *www.nepa.gov.* The comments that suggested editorial revisions and requested clarification of terms are addressed in the text of the final guidance. Comments that raised policy or substantive concerns are grouped into thematic issues and addressed in the following sections of this notice.

Highlighting the Value of NEPA

Many commenters expressed support for CEQ's efforts to encourage timely and efficient use of the NEPA environmental review process to inform agency decision-making. Some commenters asserted that the draft guidance did not adequately highlight NEPA's value and successes. These commenters urged CEQ to further discuss how NEPA is an effective tool for ensuring fully informed decision-making and meaningful public participation.

CEQ agrees and expanded the introduction of the final guidance to incorporate a broader discussion of NEPA's role in assisting agencies in decision-making and providing opportunity for meaningful public participation. This final guidance was developed to provide for the consistent, proper, and appropriate development and use of programmatic NEPA reviews by Federal agencies. It reinforces the process required to establish opportunities for public involvement, increased transparency, and informed decision-making.

Applicability to Environmental Assessments

One commenter asked for further explanation as to why programmatic approaches apply to developing an Environmental Assessment (EA) as well as Environmental Impact Statement (EIS).

[1] A discussion of NEPA applicability is beyond the scope of this guidance. For more information see CEQ, *The Citizen's Guide to the National Environmental Policy Act, available at https://ceq.doe.gov/nepa/Citizens_Guide_Dec07.pdf.*

[2] National Environmental Policy Act (NEPA) Draft Guidance, Effective Use of Programmatic NEPA Reviews, 79 FR 50,578, August 22, 2014.

CEQ interprets its regulations as allowing for the use of a programmatic approach in developing an EA. Neither the NEPA statute nor CEQ's regulations prohibit programmatic approaches for an EA. Each federal agency has its own agency NEPA implementing procedures which adapt the framework established by the CEQ regulations to address agency specific missions and decision-making authority. Agencies are encouraged to revise or amend their NEPA implementing procedures, if necessary, to allow for the use of programmatic EAs and EISs.

Request for More Examples

Many commenters requested additional case studies and examples to show real-world applications of programmatic NEPA review. Some commenters also requested examples of where programmatic NEPA review would not be appropriate. Several commenters requested more examples of instances where programmatic NEPA review allowed for informed decision-making, meaningful public involvement, and adequately addressed site-specific impacts.

To address these comments, CEQ has added more examples and legal authorities, where appropriate, and tried to provide them wherever they are helpful and illustrative. If CEQ learns of other helpful examples, they will periodically be made available on the NEPA.gov Web site.

Concerns About Delay

Some commenters expressed concern over the timeliness and burden of programmatic NEPA reviews. One commenter stated that tiered programmatic NEPA reviews may lead to unproductive additional layers of review and therefore may encourage undue delay, cost, and inefficiency. This commenter raised an example of how a programmatic review for a corridor will lead to duplicative review when individual projects are sited.

The final guidance emphasizes that agencies are given the discretion to determine whether programmatic NEPA review will be an effective and efficient way to address environmental impacts. If an agency determines that a broad-level analysis and review of a proposal allows informed and meaningful decision-making, the agency should have the flexibility to do so. Although the commenter argues that a tiered approach to review constitutes ''delay,'' CEQ finds that in many situations there is merit in looking at a proposal on a broad level and then focusing a subsequent, tiered, review on the relevant issues at the site- or project-specific level. The agency responsible for the NEPA review should take the timing of the decisions and the programmatic and subsequent tiered NEPA reviews into account when determining how best to proceed.

When To Use Programmatic Review

Several commenters requested that CEQ include a test or presumption about when using a programmatic approach is appropriate. One commenter advocated for a test as set out by *Kleppe* v. *Sierra Club,* 427 U.S. 390 (1976). Another commenter requested that CEQ include a presumption against programmatic NEPA review because case-by-case analysis of projects will provide more robust environmental analysis and public involvement. Conversely, another commenter urged CEQ to mandate when agencies should conduct programmatic review for projects that affect a common geographic region or a suite of similar projects.

CEQ rejects the use of a set test that would be applicable across all agencies and the use of a default presumption. As written in the final guidance, agencies have discretion to determine whether a programmatic approach is appropriate. A default presumption may limit agency flexibility and be too prescriptive. *Kleppe* does not establish a hard line test and, instead, explains that agencies have the technical expertise and discretion to determine whether a programmatic review is appropriate. The final guidance explains that each agency should determine the circumstances in which it is appropriate to prepare programmatic NEPA documentation. The agency preparing the NEPA review is responsible for tailoring the review to the type of action involved while taking into account the potential efficiencies, maximizing informed decision-making, and ensuring compliance with other laws, regulations, and policies relevant to the decision at hand.

Programmatic Documents as a Stand-Alone Document

Several commenters raised concerns about whether agencies may prepare a single NEPA document to support both programmatic and project-specific proposals. Some commenters have urged CEQ to create a default presumption that programmatic reviews alone are inappropriate.

The final guidance makes it clear that any Federal agency program charged with complying with NEPA has the discretion to determine when a programmatic NEPA review is appropriate. CEQ declines to create a default presumption but has added language to provide more clarity and guidance about when a NEPA review includes both programmatic and project-specific decisions, as well as when a single programmatic NEPA review is appropriate. For example, a single programmatic NEPA review may be appropriate when an agency plans to make a broad program decision. When both programmatic and project-specific decisions are being made, the NEPA review should be clear in identifying the decisions and the environmental analysis to support those decisions.

Proper Use of Tiering

A few commenters raised concerns about when a programmatic EIS may be tiered from a previous programmatic NEPA review. One commenter expressed that improper tiering to subsequent actions could lead to delay, an unnecessary use of time and resources, and an improper substantive analysis of environmental impacts. This commenter, along with another commenter, requested that any tiered documents are only required to analyze new impacts that were not previously addressed. Conversely, another commenter stated that tiered review is the greatest opportunity for a recognized benefit of programmatic review and that they should be further encouraged.

The final guidance makes it clear that the Federal agency program responsible for complying with NEPA has the discretion to determine whether a programmatic NEPA review is appropriate. A programmatic NEPA review followed by a tiered NEPA review is appropriate when such an approach provides a framework for agencies to help public officials make timely decisions based on an understanding of the environmental consequences relevant to the decision at hand. As a result, CEQ finds it inappropriate to establish a presumption that substantive analysis is unnecessary or should be precluded in subsequent tiered documents. Finally, new examples have been added that explain that one level of review may be sufficient in certain cases—such as when an agency undergoes rulemaking, adopts an agency-wide policy, adopts a formal plan, or redesigns an existing program—and that a programmatic EA is not invalidated when the subsequent decision requires preparation of an EIS.

Tiering From a Programmatic EA With Findings of No Significant Impact

A few commenters expressed concerns about scenarios where an agency has a PEA that results in a finding of no significant impact (FONSI)

and then tiers to a subsequent project-specific EIS. One commenter stated that it seems counterintuitive that a programmatic Environmental Assessment supported by a FONSI could approve a number or actions that then lead to a NEPA analysis for a project that has the potential for a significant impact on the environment.

The final guidance has been modified to contain two examples of how a programmatic environmental impact statement may tier from a programmatic EA. One example is that a programmatic EA may be used to articulate standard mitigation for a suite of similar projects, such as capturing vented methane. This programmatic EA may result in a FONSI and project-level construction that goes beyond the mitigation in the EA will require a programmatic EIS. The other example is that a programmatic EA may result in a FONSI but a subsequent proposal represents a unique or unexpected circumstance that raises the potential for significant impacts. In such a circumstance, a tiered EIS would not undermine or invalidate the programmatic EA which resulted in a FONSI. Additionally, the final guidance also makes clear that an agency should explain in all programmatic NEPA reviews how the agency intends to use it to complete future proposal-specific NEPA reviews.

Supplementation and New Information

Some commenters raised concerns about when a programmatic review should be supplemented or when new information would substantially affect the programmatic analysis. One commenter requested that CEQ include language that, once a decision is made, there is no obligation for an agency to supplement a NEPA review. This commenter requested that in light of *Norton* v. *Southern Utah Wilderness Alliance,* 542 U.S. 55 (2004), any decision to approve a plan should be recognized as a completed decision and no supplements to a programmatic NEPA review are required.

CEQ has added a footnote in the final guidance to clarify the role of *Southern Utah Wilderness Alliance.* In that case the United States Supreme Court noted that an agency must take a ''hard look'' at new information to determine whether supplementation is necessary. 542 U.S. at 73 (citing *Marsh* v. *Oregon Natural Resources Council,* 490 U.S. 360, 370–374 (1989)). The Court distinguished *Southern Utah Wilderness Alliance* in that there were no subsequent decisions to be made and there was no ongoing ''major Federal action'' that required supplementation. *Id.*

The final guidance makes it clear that supplementation may be required when there are more decisions to be made by the agency that would use the original NEPA review. The programmatic NEPA review process may defer issues for subsequent tiers of review. Site- or project-specific impacts might not be fully evaluated at initial tiers of review when the decision to act on a site development or its equivalent is yet to be made. Agencies should, when decisions remain to be made and the Federal action is on-going, consider new information to determine if that would require updating or supplementing the programmatic NEPA review.

Another commenter requested language in the final guidance that requires agencies to carefully reexamine any programmatic NEPA review that is more than five years-old to determine whether the criteria for supplementation must be met. This commenter notes that there are many cases where an agency fails to update a NEPA review even though there has been no construction or ongoing activity for five years. Another commenter asked CEQ to have agencies supplement their programmatic reviews, rather than address the information at the site-specific level, in situations where new information could affect the impacts of program as a whole.

CEQ understands these concerns and further refined its discussion about supplementation. The CEQ regulations provide a procedural framework for keeping environmental analyses current. They require agencies to prepare supplements upon determining there is significant new information of relevance to the proposed action or its impacts. The final guidance acknowledges that there is a possibility of new information arising after an EA or EIS is completed that exists regardless of whether a NEPA review is programmatic. The requirements to update or supplement a NEPA review remains the same for programmatic as it does for non-programmatic NEPA reviews.

The Lifespan of Programmatic Documents

Some commenters raised the concern about the lifespan of programmatic documents and asked for more clarity about when supplementation or a new programmatic NEPA review will be required. These commenters pointed out that, while programmatic NEPA reviews may discuss potential environmental impacts, the information can often become outdated and cannot be used for subsequent decision-making. One commenter suggested that the final guidance should mandate that an agency may not rely on any NEPA document that is more than ten years old. Another commenter suggested that all programmatic NEPA analysis should have set triggers for supplementation or expiration dates.

The final guidance clearly states that agencies must consider and make reasonable efforts to anticipate the length of time the programmatic decision and its supporting NEPA review will be maintained and used for subsequent tiered reviews. There is no fixed timeline or expiration date for programmatic NEPA documents, just as there is no fixed timeline or expiration date for other types NEPA review. The final guidance refers to question 32 in CEQ's 40 Most Asked Questions, which states that as a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are more than five years old should be carefully reexamined to determine if a supplement is required. The final guidance does encourage agencies to determine the factors that may result in the need to supplement or refresh the analysis and communicate this to stakeholders. When a programmatic review is projected to have a long life span to be used for subsequent decision-making, the final guidance states that an agency should pay close attention to the possible effects of new information.

Alternatives

Several commenters requested more clarity on the appropriate use of alternative analysis in a programmatic NEPA review. One commenter asked for a narrower interpretation of what constitutes a ''reasonable alternative'' so that broad-level NEPA review is not unduly burdened. Other commenters asked that CEQ place particular emphasis on the importance of soliciting and considering alternatives developed outside of the lead agency, especially local government and publically-developed alternatives. Several commenters suggest that limiting alternatives or general analysis in one review that is later relied upon in a subsequent site-specific NEPA review could limit meaningful and informed decision-making. They urged CEQ to amend the guidance to prohibit the use of programmatic NEPA reviews to narrow or restrict future alternatives for activities such as multifaceted actions or operating plans. Many commenters stated that alternatives and public involvement should not be narrowed down until site-specific impact analysis has been carried out.

The final guidance emphasizes that alternatives in a programmatic NEPA

review are expected to reflect the level of the Federal action being proposed and the standard NEPA requirements for alternatives apply. ''Reasonable alternatives'' depend on the nature of the proposal and the facts of the case. Factors in determining whether an alternative is reasonable include the purpose and need for the decision and its effects on the environment and on the affected community(s), as well as the state of the technologies available to achieve the proposed outcome. The final guidance makes clear that, by articulating the reasoned choice between alternatives, with a discussion of why considered alternatives were not chosen, the range of alternatives in programmatic NEPA reviews can be appropriately narrowed.

CEQ supports public and local government involvement in the NEPA process, including the development of alternatives. Non-agency alternatives can be considered in any NEPA process, regardless of whether it is programmatic or not, provided they are technically and economically feasible. The final guidance was revised to clarify that non-agency alternatives may be considered. Additionally, the final guidance provides an entire section devoted to public involvement and collaboration and cooperation among Federal agencies, tribes, and state and local governments. CEQ's encouragement of working with other parties includes the development of reasonable alternatives to allow for informed decision-making.

Cumulative Impacts

Several commenters raised concerns about how to effectively analyze cumulative effects for each resource in tiered programmatic review rather than only completing cumulative analysis for the program overall. These commenters suggest that it is difficult to evaluate cumulative actions when individual projects are deferred or not completely conceptualized.

As specifically set out in the CEQ regulations and all CEQ guidance, the consideration of the potential cumulative impacts of proposed actions is an important and integral aspect of the NEPA process. CEQ has modified the final guidance to describe when cumulative impacts should be analyzed for potentially affected resources in each level of review. An agency should not solely complete a cumulative analysis for the broader programmatic review.

Public Involvement

Commenters were most concerned about how programmatic NEPA review affects public participation and involvement. Several commenters expressed concern that programmatic NEPA review leads to a ''shell game'' when there is deferred analysis of specific impacts to subsequent tiers within the NEPA process. According to these commenters, deferred analysis may lead to poor meaningful involvement and an insufficient review of potential environmental impacts. One commenter asked for CEQ to strengthen guidance language about how to actively engage the public before and during an agency's programmatic NEPA review process. Several commenters asked CEQ to emphasize that agencies must communicate to the public how the programmatic NEPA review is being used and which issues are deferred for subsequent tiered NEPA reviews. These commenters noted that where an agency issues a programmatic NEPA review and a party is interested in challenging its validity, the agency often responds that the party should wait to raise concerns at the site-specific level because the agency will address these concerns at that level. They suggest that is appropriate to raise issues at the programmatic level where the issues affect the program as a whole and the issues are not present at each site-specific level, or where the cumulative impact of the issues is plain at the programmatic level but is relatively insignificant at the level of the site. Another commenter raised the issue that broad-level review may create public participation issues because it is difficult for the public to understand how a project affects them until the project-specific level. One commenter also suggested that CEQ mandate that all comment periods for programmatic NEPA review be extended from 45 days to 90 days.

The final guidance makes it clear that CEQ strongly encourages public involvement in all programmatic and tiered NEPA reviews. As the final guidance explains, engaging the public in the environmental aspects of Federal decision-making is a key policy goal of NEPA and the CEQ regulations. Public involvement is not limited to the provision of information by agencies; it should also include meaningful opportunities for the public to provide comment and feedback on the information made available. Considering recent advances in information technology, agencies should consider employing additional measures to involve the public beyond simply publishing a **Federal Register** notice. The final guidance suggests ways to involve the public, such as engaging non-governmental organizations, citizen's groups, labor organizations, and trade associations.

The final guidance recognizes that public engagement is particularly important when developing programmatic NEPA reviews in order to ensure agency objectives are understood and to make it clear how a programmatic review will influence subsequent tiered reviews. Effective public engagement also will help manage expectations with regard to the purpose and need, the scope of the broad environmental analyses, and the purpose and need and scope of subsequent site- and project-specific environmental analyses. The final guidance encourages outreach to potential stakeholders as early as possible to afford the public a meaningful opportunity to comment on and shape the programmatic NEPA review and/or develop alternatives to be considered. The guidance recognizes that members of the public are less likely to participate or engage in the commenting process if they do not fully understand how the outcomes will affect them. It is critical that agencies provide context and as much information as possible in the beginning of the public involvement process.

The final guidance has been modified to emphasize that proactive and robust public participation is encouraged and, when appropriate, comment periods may need to be extended to ensure meaningful involvement. CEQ declines to mandate a maximum timeframe for comment periods because agencies should have the flexibility and discretion to determine whether the minimum timeframes provided in the CEQ regulations should be extended to provide time for meaningful review.

The final guidance encourages that an agency supports early public participation by clearly explaining to the public not only what the proposed programmatic evaluation is meant to accomplish, but also how it relates to future actions, and why the public should get involved at the programmatic stage and not wait for any tiered reviews. The guidance makes clear that an agency should clearly state which concerns are addressed at that level of review and which concerns will be addressed in the tiered NEPA review.

Coordination With Other Environmental Reviews

A few commenters reminded CEQ that NEPA review acts as the foundation for other statutory reviews such as the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA). One commenter asked for more clarification that a consolidated NEPA

review generally should form the basis for reviews under all federal environmental laws that pertain to a given action. Another commenter requested revisions to include a schedule or other mechanism for coordinating ESA, Marine Mammal Protection Act, NHPA, and other interagency consultation processes so as to increase efficiency and create enforceable timelines. Another commenter asked for additional discussion about entering into programmatic agreements with other regulatory agencies such as the United States Fish and Wildlife Service.

The final guidance recognizes that the purpose and need statement and the proposed action for the programmatic NEPA review are critical for determining the compliance requirements under other applicable laws and regulations, such as ESA, NHPA, and Clean Water Act. Language has been added to the final guidance to emphasize that an agency should consider the appropriate level of compliance with other laws for a programmatic NEPA review, for example by considering programmatic agreements under the ESA and NHPA, and the potential for a separate, more focused and specific consultation, for any subsequent tiered NEPA review.

Hard Look Doctrine

A few commenters asked for further clarification on how the ''hard look'' doctrine should be met for programmatic NEPA analysis. The final guidance explains that a programmatic NEPA review should contain sufficient discussion of the relevant issues and opposing viewpoints to enable the decisionmaker to take a ''hard look'' at the environmental effects and make a reasoned choice among alternatives.

The final guidance describes the hard look doctrine in greater detail and an agency should include a statement in its programmatic NEPA review that explains rationale as to how various environmental effects were analyzed given the scope of the programmatic decisions being made.

Mitigation and Monitoring

Several commenters voiced concerns that the final guidance does not adequately address mitigation and monitoring. Some commenters noted that agencies often fail to follow through on mitigation strategies throughout the programmatic NEPA process, and solely focus on mitigation at the broad-level review. These commenters also recommend that agencies be required to incorporate not only monitoring but also triggers and methods to update mitigation requirements depending on the monitoring results. Some of these commenters also requested that CEQ provide more direction about the necessity of mitigation monitoring and adaptive management in the context of environmental review.

The CEQ regulations provide a framework for mitigating adverse environmental impacts. Mitigation and monitoring are key components of NEPA regardless of whether the NEPA process is programmatic. The final guidance recognizes that programmatic NEPA reviews provide an opportunity for agencies to incorporate comprehensive mitigation planning and monitoring strategies into the Federal policymaking process at a broad or strategic, rather than specific or site-by-site, level. New language has been added to include recognition that best management practices, adaptive management practices, and standard operating procedures may also be incorporated. The final guidance now notes that adaptive management can provide the basis for an agency to change the course of implementation without the need for developing supplemental NEPA reviews and the associated documentation.

(**Authority:** 42 U.S.C. 4332, 4342, 4344 and 40 CFR parts 1500, 1501, 1502, 1503, 1505, 1506, 1507, and 1508)

Dated: December 18, 2014.

Brenda Mallory,

General Counsel, Council on Environmental Quality.

[FR Doc. 2014–30034 Filed 12–22–14; 8:45 am]

BILLING CODE 3225–F5–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'' or ''the Panel''). The meeting is open to the public.

DATES: A meeting of the Judicial Proceedings Panel will be held on Friday, January 16, 2015. The Public Session will begin at 9:00 a.m. and end at 5:00 p.m.

ADDRESSES: U.S. District Court for the District of Columbia, 333 Constitution Avenue NW., Courtroom #20, 6th Floor, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil* Phone: (703) 693–3849. Web site: *http://jpp.whs.mil.*

SUPPLEMENTARY INFORMATION: This public meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: At this meeting, the Judicial Proceedings Panel will deliberate on the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), as amended, Section 576(a)(2) requirement to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the amendments made to the Uniform Code of Military Justice by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to this tasking.

Agenda:

- 8:30 a.m.–9:00 a.m. Administrative Session (41 CFR 102–3.160, not subject to notice & open meeting requirements)
- 9:00 a.m.–4:45 p.m. Panel Deliberations on Initial JPP Report
- 4:45 p.m.–5:00 p.m. Public Comment

Availability of Materials for the Meeting: A copy of the January 16, 2015 meeting agenda or any updates to the agenda, to include individual speakers not identified at the time of this notice, as well as other materials presented related to the meeting, may be obtained at the meeting or from the Panel's Web site at *http://jpp.whs.mil.*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Julie Carson at

whs.pentagon.em.mbx.judicial-panel@mail.mil at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by Ms. Julie Carson at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to Ms. Carson at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted along with a request to provide an oral statement. Oral presentations by members of the public will be permitted between 4:45 p.m. and 5:00 p.m. on January 16, 2015 in front of the Panel. The number of oral presentations to be made will depend on the number of requests received from members of the public on a first-come basis. After reviewing the requests for oral presentation, the Chairperson and the Designated Federal Officer will, having determined the statement to be relevant to the Panel's mission, allot five minutes to persons desiring to make an oral presentation.

Committee's Designated Federal Officer: The Board's Designated Federal Officer is Ms. Maria Fried, Judicial Proceedings Panel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: December 18, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–30031 Filed 12–22–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Defense Business Board. This meeting is open to the public.

DATES: The public meeting of the Defense Business Board (hereafter referred to as ''the Board'') will be held on Thursday, January 22, 2015. The meeting will begin at 8:30 a.m. and end at 11:30 a.m. (Escort required; see guidance in the **SUPPLEMENTARY INFORMATION** section, ''Public's Accessibility to the Meeting.'')

ADDRESSES: Room 3E863 in the Pentagon, Washington, DC (Escort required; see guidance in the **SUPPLEMENTARY INFORMATION** section, ''Public's Accessibility to the Meeting.'')

FOR FURTHER INFORMATION CONTACT: *Committee's Designated Federal Officer:* The Board's Designated Federal Officer is Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *phyllis.l.ferguson2.civ@mail.mil,* 703–695–7563. For meeting information please contact Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *debora.k.duffy.civ@mail.mil,* (703) 697–2168.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: At this meeting, the Board will deliberate the findings and draft recommendations from the *''Guiding Principles to Optimize DoD's Science and Technology Investments,''* and the *''Transforming Department of Defense Core Business Processes for Revolutionary Change''* Task Groups.

The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice which reflects an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

Availability of Materials for the Meeting: A copy of the agenda and the terms of reference for each Task Group study may be obtained from the Board's Web site at *http://dbb.defense.gov/meetings.* Copies will also be available at the meeting.

Meeting Agenda:

8:30 a.m.–10:00 a.m.—Task Group Outbrief and Board Deliberations on *''Guiding Principles to Optimize DoD's Science and Technology Investments.''*

10:00 a.m.–11:30 a.m.—Task Group Outbrief and Board Deliberations on *''Transforming Department of Defense Core Business Processes for Revolutionary Change.''*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Debora Duffy at the number listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 12:00 p.m. on Wednesday, January 14 to register and make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance with sufficient time to complete security screening no later than 8:00 a.m. on January 22. To complete security screening, please come prepared to present two forms of identification and one must be a pictured identification card.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Duffy at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments

Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public meeting.

Written comments should be received by the DFO at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the address for the DFO given in the **FOR FURTHER INFORMATION CONTACT** section in either Adobe Acrobat or Microsoft Word format. The public will be offered an opportunity for oral comments during the public session as time permits. Please note that since the Board operates under the provisions of the

Federal Advisory Committee Act, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Dated: December 18, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–30003 Filed 12–22–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 14, 2015, 6:00 p.m.

ADDRESSES: Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@emor.doe.gov* or check the Web site at *http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Welcome and Announcements
- Comments From the Deputy Designated Federal Officer
- Comments From the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation
- Additions/Approval of Agenda
- Motions/Approval of November 12, 2014 Meeting Minutes
- Status of Recommendations With DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to logistical issues that had to be resolved prior to the meeting date.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

Issued at Washington, DC, on December 16, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–30116 Filed 12–22–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 14644–000]

Kings River Conservation District; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 29, 2014, the Kings River Conservation District (applicant) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Peoples Weir Hydroelectric Project at the Peoples Weir on the Kings River, near the city of Kingsburg in King County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The applicant seeks to study one or more configurations for installing generating facilities immediately below Peoples Weir that would generate with streamflow that would normally pass over the dam. Based upon preliminary studies, the site has the potential to generate 590 kilowatts with an annual energy output of 1.9 gigawatt-hours. The project would likely connect to PG&E's transmission system located about 1000 feet from the powerhouse site.

Applicant Contact: David Orth, 4886 East Jensen Avenue, Fresno, CA 93725, Telephone (559) 237–5567.

FERC Contact: Jim Fargo; phone: (202) 502–6095.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system 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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14644–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number

(P–14644) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 9, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29955 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–22–000]

Dominion Cove Point LNG, LP; Notice of Application

Take notice that on December 3, 2014, Dominion Cove Point LNG, LP (Dominion) filed an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct, install, own, operate, and maintain certain facilities located in Fairfax County, Virginia and Charles County, Maryland (St. Charles Transportation Project). The filing may 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@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Tiffany Werts, Regulatory and Certificates Analyst, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, telephone: (866) 319–3382.

CPV Maryland, LLC (CPV) is proposing to build a 725-megawatt natural gas-fired combined power plant in Charles County, Maryland. In response to CPV's request, Dominion proposes to install one new 7,000 horsepower (hp) electric compressor and related facilities at its existing Pleasant Valley Compressor Station located in Fairfax County, Virginia. Dominion also proposes to construct and operate two new 16-inch delivery taps in Charles County, Maryland. These taps are required for customer delivery and will be installed on Dominion's TL–522 and TL–532 pipelines. The St. Charles Transportation Project will provide 132,000 dekatherms per day of incremental firm transportation service to CPV. Dominion has executed a precedent agreement with CPV for all of the capacity associated with the project for a primary term of twenty years. Dominion requests authorization to establish an initial recourse rate for firm service using the proposed project. The cost of the proposed project is $30,618,189. Dominion proposes an in-service date of June 1, 2016.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments 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 under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5:00 p.m. Eastern Time on January 6, 2015.

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29962 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–24–000]

Dominion Cove Point LNG, LP; Notice of Application

Take notice that on December 3, 2014, Dominion Cove Point LNG, LP (Dominion) filed an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct, install, own, operate, and maintain certain facilities located in Fairfax County, Virginia and Charles County, Maryland (Keys Energy

Project). The filing may 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@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Tiffany Werts, Regulatory and Certificates Analyst, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, telephone: (866) 319–3382.

To accommodate the new service entitlements for a customer, Keys Energy Center (Keys Energy), Dominion proposes to install one new 6,000 horsepower (hp) electric compressor and related facilities at its existing Pleasant Valley Compressor Station located in Fairfax County, Virginia. Dominion also proposes to construct a new metering and regulating station and appurtenant facilities in Charles County, Maryland. The Keys Energy Project will provide 107,000 dekatherms per day of incremental firm transportation service to Keys Energy. Dominion has executed a precedent agreement with Keys Energy for all of the capacity associated with the project for a primary term of twenty years. Dominion requests authorization to establish an initial recourse rate for firm service using the proposed project. The cost of the proposed project is $36,615,014. Dominion proposes an in-service date of March 1, 2017.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments 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 under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5:00 p.m. Eastern Time on January 6, 2015.

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29957 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2829–005]

City of Loveland, Colorado; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Surrender of License.

b. *Project No.:* 2829–005.

c. *Date Filed:* November 12, 2014.

d. *Applicants:* City of Loveland, Colorado.

e. *Name of Projects:* Loveland Hydroelectric Project.

f. *Location:* Big Thompson River, in Larimer County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Steve Adams, Loveland Light and Power, 200 North Wilson St., Building 1, Loveland, CO 80537, (303) 962–3400.

i. *FERC Contact:* Jennifer Ambler, (202) 502–8586, *jennifer.ambler@ferc.gov*.

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system 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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2829–005) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The applicant proposes to surrender the license for the Loveland Hydroelectric Project due to severe damage to the powerhouse, Idylwilde Dam, and other project features as a result of flooding in September 2013. As part of the Surrender, the applicant intends to remove certain project facilities and abandon in place other features.

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 email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone 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.

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29947 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–27–000]

Delaware Division of the Public Advocate, Delaware Municipal Electric Corporation, Inc., Delaware Public Service Commission, Maryland Office of People's Counsel, Maryland Public Service Commission, New Jersey Board of Public Utilities, New Jersey Division of Rate Counsel, Office of the People's Counsel of the District of Columbia, Public Service Commission of the District of Columbia v. Baltimore Gas and Electric Company, Pepco Holdings, Inc., Operating Affiliates: Potomac Electric Power Company, Delmarva Power & Light Company, Atlantic City Electric Company; Notice of Complaint

December 9, 2014.

Take notice that on December 8, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, the Delaware Division of the Public Advocate, Delaware Municipal Electric Corporation, Inc., Delaware Public Service Commission, Maryland Office of People's Counsel, Maryland Public Service Commission, New Jersey Board of Public Utilities, New Jersey Division of Rate Counsel, Office of the People's Counsel of the District of Columbia, and Public Service Commission of the District of Columbia (collectively, Joint Complainants) filed a formal complaint against Baltimore Gas and Electric Company and the Pepco Holdings, Inc. affiliates: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company (collectively, Respondents) alleging that the existing Base Return on Equity used in Respondent's formula transmission rates is unjust and unreasonable, as more fully explained in the complaint.

The Joint Complainants certifies that copies of the complaint were served on the contacts for the Respondents and PJM Interconnection, L.L.C.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 29, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29954 Filed 12–22–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–30–000]

San Francisco Bay Area Rapid Transit District v. Pacific Gas and Electric Company; Notice of Complaint

Take notice that on December 12, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e, San Francisco Bay Area Rapid Transit District (Complainant), filed a formal complaint against Pacific Gas and Electric Company (Respondent), alleging that the Respondent's intent to discontinue providing electric tags (e-Tags) needed for transmission of electricity to the Complainant from sources outside of the California Independent System Operator Balancing Authority Area would violate the Service Agreement for Network Integration Transmission Service between the Complainant and Respondent, as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts of the Respondent as listed on the Commission's list of Corporation Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 2, 2015.

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29958 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–32–000]

North Carolina Waste Awareness and Reduction Network, Inc. v. Duke Energy; Notice of Complaint

Take notice that on December 16, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and section 206 of the Federal Power Act, 16 U.S.C. 824e, North Carolina Waste Awareness and Reduction Network, Inc. (Complainant or NC WARN), filed a formal complaint against Duke Energy (Respondent), alleging that the Respondent manipulates the electricity market so that the Respondent can construct new generating plants that are not needed and not warranted given the overcapacity in the Southeast region. In addition, NC WARN requests the Commission to investigate the Respondent's practices to determine if the Respondent should enter into a Regional Transmission Operator and purchase necessary power from other utilities rather than construct wasteful and redundant generating plants.

The Complainant certifies that copies of the complaint were served on the contacts of the Respondent as listed on the Commission's list of Corporation Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 5, 2015.

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29960 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP15–259–000]

Pivotal LNG, Inc.; Notice of Petition for Declaratory Order

Take notice that on December 10, 2014, pursuant to section 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR

385.207(a)(2) (2014), Pivotal LNG, Inc. submitted a petition for declaratory order seeking a ruling that certain existing liquefied natural gas (LNG) production facilities, not otherwise subject to the Commission's jurisdiction under section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b (2012), would not be deemed ''LNG terminal[s],'' as that term is defined in section 2(11) of the NGA, *id.* 717a(11), by virtue of the production or sale of LNG that is subsequently exported, or re-sold for ultimate export, by a third party, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 31, 2014.

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29953 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2629–014-Vermont]

Village of Morrisville, Vermont; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the multi-development Morrisville Hydroelectric Project, located on the Green River, Elmore Pond Brook, and Lamoille River in Lamoille County, Vermont, and has prepared a final Environmental Assessment (EA) for the project. The project does not occupy any federal land.

The final EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is on file with the Commission and is available for public inspection. The final EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Steve Kartalia at (202) 502–6131 or *Stephen.Kartalia@ferc.gov.*

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29961 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–552–000 and Docket No. CP13–553–000]

Sabine Pass Liquefaction Expansion, LLC; Sabine Pass Liquefaction, LLC; Sabine Pass LNG, L.P; Cheniere Creole Trail Pipeline, L.P.; Notice of Availability of the Environmental Assessment for the Proposed Sabine Pass Liquefaction Expansion Project and Cheniere Creole Trail Pipeline Expansion Project

December 12, 2014.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Sabine Pass Liquefaction Expansion Project (SPLE Project) proposed by for Sabine Pass Liquefaction Expansion, LLC; Sabine Pass Liquefaction, LLC; and Sabine Pass LNG, L.P. (collectively referred to as Sabine Pass), and for the and Cheniere Creole Trail Pipeline Expansion Project (CCTPL Expansion Project) proposed by Cheniere Creole Trail Pipeline, L.P. (CCTPL) in the above-referenced dockets. Sabine Pass requests authorization to expand the existing Sabine Pass Liquefied Natural Gas (SPLNG) Terminal in Cameron Parish, Louisiana, by adding two liquefaction trains (Trains 5 and 6) capable of processing about 1.4 billion cubic feet per day (Bcf/d) of natural gas and to export about 9 million metric tons of liquefied natural gas (LNG) per annum via LNG carriers. CCTPL requests authorization to expand and extend the existing CCTPL pipeline system to enable it to provide an additional 1.5 Bcf/d of transportation capacity to the SPLNG Terminal. The CCTPL Expansion Project would add about 104.3 miles of 42- and 36-inch-diameter pipeline, including two loops (Loop 1 and Loop 2), an Extension, and three laterals; a new compressor station; and four metering and regulating (M&R) stations. These facilities would be in Cameron, Calcasieu, Beauregard, Allen, and Evangeline Parishes, Louisiana.

The EA assesses the potential environmental effects of the construction and operation of the SPLE Project and CCTPL Expansion Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Department of Energy, U.S. Department of Transportation, U.S. Army Corps of Engineers, and U.S. Environmental Protection Agency participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed SPLE Project includes the following facilities:

- Two LNG liquefaction trains;
- additional power generation (two gas turbine generators capable of generating approximately 30 megawatts of power);
- other infrastructure and modifications (including five recycle boil-off gas compressors, three instrument air compressor packages, two demineralizer units, one demineralized water tank, and two diesel-powered standby generators);
- modification of terminal facilities; and
- new and remodeled buildings.

The proposed CCTPL Expansion Project includes the following facilities:

- Loop 1, about 13.9 miles of 42-inch-diameter pipeline;
- Loop 2, about 24.5 miles of 42-inch-diameter pipeline;
- Extension, about 48.5 miles of 42-inch-diameter pipeline;
- Laterals, four 36-inch-diameter pipelines of 0.2, 1.7, 4.0, and 11.5 miles in length;
- new or modified compressors at the Gillis Compressor Station;
- a new Mamou Compressor Station;
- four new M&R Stations;
- pig launchers/receivers; and
- mainline valves.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before January 12, 2015.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket numbers (CP13–552–000 and CP13–553–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP13–552). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29956 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

[1] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14635–000]

Village of Gouverneur; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14635–000.

c. *Date Filed:* September 10, 2014.

d. *Submitted By:* Village of Gouverneur.

e. *Name of Project:* Gouverneur Hydroelectric Project.

f. *Location:* On the Oswegatchie River, in St. Lawrence County, New York. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Robert Leader, Case & Leader LLP, 107 East Main Street, Gouverneur, NY 13642; (315) 287–2000.

i. *FERC Contact:* Jody Callihan at (202) 502–8278; or email at *jody.callihan@ferc.gov.*

j. Village of Gouverneur (Gouverneur) filed its request to use the Traditional Licensing Process on September 10, 2014. Gouverneur provided public notice of its request on September 12, 2014. In a letter dated December 16, 2014, the Director of the Division of Hydropower Licensing approved Gouverneur's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Gouverneur filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR. 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the offices of the Village of Gouverneur, 33 Clinton Street, Gouverneur, NY 13642.

n. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29951 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–31–000]

PJM Interconnection, L.L.C.; Notice of Filing

Take notice that on December 15, 2014, PJM Interconnection, L.L.C., pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e, and Part 35 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 35, submits tariff filing per 385.206: Revisions to the Amended and Restated Operating Agreement and Open Access Transmission Tariff re Offer Caps to be effective 1/9/2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 23, 2014.

Dated: December 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29959 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 14652–000]

BC Energy, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 10, 2014, BC Energy, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Bruskasna Creek Hydroelectric Project (Bruskasna Creek Project or project) to be located on Bruskasna Creek, in unincorporated Denali Borough, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new features: (1) A 50-foot-long, 10-foot-high concrete diversion weir traversing Bruskasna Creek; (2) an approximately 10-acre-foot impoundment; (3) a 13,500-foot-long, 2.5-foot-diameter steel penstock; (4) a 25-foot-long, 35-foot-wide concrete powerhouse; (5) a single 1.7-megawatt Pelton turbine/generator; (6) a 34,000-foot-long, 15-kilovolt (kV) transmission line interconnecting with an existing 15-kV Golden Valley Electric Association distribution line; (7) an approximately 46,000-foot-long access road; and (8) appurtenant facilities. The estimated annual generation of the Bruskasna Creek Project would be 5.2 gigawatt-hours.

Applicant Contact: Mr. Brent Smith, Northwest Power Services, Inc., P.O. Box 872316, Wasilla, Alaska 99687; phone: (907) 414–8223.

FERC Contact: Sean O'Neill; phone: (202) 502–6462.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system 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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14652–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14652) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29952 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14581–000]

Turlock Irrigation District; Modesto Irrigation District; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the California State Historic Preservation Officer (hereinafter, California SHPO), and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the La Grange Hydroelectric Project No. 14581.

The programmatic agreement, when executed by the Commission and the California SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the La Grange Hydroelectric Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Turlock Irrigation District and Modesto Irrigation District, as the licensees for the La Grange Hydroelectric Project No. 14581, and the Central Sierra Me-Wuk, Tuolumne Band of Me-Wuk Indians, North Fork Mono Tribe, Southern Sierra Miwuk Nation, Chicken Ranch Rancheria of Me-Wuk Indians, Buena Vista Rancheria, California Valley Miwok Tribe, Picayune Rancheria of the Chukchansi Indians, National Park Service, and Bureau of Land Management have expressed an interest in this proceeding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

John Eddins or Representative, Office of Planning and Review, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW., Suite 809, Washington, DC 20004

Reba Fuller or Representative, Central Sierra Me-Wuk Cultural and Historic Preservation Committee, P.O. Box 699, Tuolumne, CA 95379

Kevin Day or Representative, Tuolumne Band of Me-Wuk Indians, P.O. Box 699, Tuolumne, CA 95379

Ron Goode or Representative, North Fork Mono Tribe, 13396 Tollhouse Road, Clovis, CA 93611

Sandy Vasquez or Representative, Southern Sierra Miwuk Nation, P.O. Box 1200, Mariposa, CA 95338

Stephen Bowes or Representative, National Park Service, 111 Jackson Street, Suite 700, Oakland, CA 94607

Amanda Blosser or Representative, Office of Historic Preservation, Department of Parks and Recreation, 1725 23rd Street, Suite 100, Sacramento, CA 95816–7100

Lloyd Mathiesen or Representative, Chicken Ranch Rancheria of Me-Wuk Indians, P.O. Box 1159, Jamestown, CA 95327

Rhonda Morningstar Pope or Representative, Buena Vista Rancheria, P.O. Box 162283, Sacramento, CA 95816

Silvia Burley or Representative, California Valley Miwok Tribe, 10601 N. Escondido Place, Stockton, CA 95212

Robert Nees, or Representative, Turlock Irrigation District, P.O. Box 949, Turlock, CA 95381

Greg Dias, or Representative, Modesto Irrigation District, P.O. Box 4060, Modesto, CA 95352

James Barnes or Representative, Bureau of Land Management, Mother Load Field Office, 5152 Hillsdale Circle, El Dorado Hills, CA 95762

Reggie Lewis or Representative, Picayune Rancheria of the Chukchansi Indians, 46575 Road, 417#A, Coarsegold, CA 93614

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON–PUBLIC Information.

Any such motions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov; FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

[1] 18 CFR 385.2010.

Please put the project number (P–14581–000) on the first page of the filing.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29949 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RP14–638–000, CP14–125–000, CP14–126–000, et al.]

Notice Establishing Comment Due Dates on Settlement

Atmos Energy Corporation v. American Midstream (Midla) LLC	Docket No. RP14–638–000
American Midstream (Midla) LLC	Docket Nos. CP14–125–000, CP14–126–000, RP14–689–000, RP14–689–001, RP14–1049–000, RP14–1049–001, RP14–1049–002, (not consolidated)

On December 11, 2014, American Midstream (Midla) LLC and the other Supporting Parties [1] filed a Stipulation and Agreement (Settlement) in the above referenced proceedings. Pursuant to Rule 602(f) of the Commission's Rules of Practice,[2] notice is hereby given that initial comments on the Settlement are due no later than December 31, 2014 and reply comments are due no later than January 12, 2015.

Dated: December 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29948 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

[1] In addition to Midla, the Supporting Parties are Atmos Energy Corporation; BASF Corporation; Enbridge Marketing (US) L.P.; Entergy Services, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC and Entergy Arkansas, Inc.; EVP Properties, L.P.; Louisiana Public Service Commission; Louisiana Municipal Gas Authority; Mississippi Public Service Commission; and Tunica Pipeline, LLC.

[2] 18 CFR 385.602(f) (2014).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD15–4–000]

Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure; Notice of Technical Conferences

Take notice that the Federal Energy Regulatory Commission (Commission) will hold a series of technical conferences to discuss implications of compliance approaches to the Clean Power Plan proposed rule, issued by the Environmental Protection Agency (EPA) on June 2, 2014.[1] In particular, the technical conferences will focus on issues related to electric reliability, wholesale electric markets and operations, and energy infrastructure. The Commission will hold a National Overview technical conference on February 19, 2015, from approximately 9:30 a.m. to 5:00 p.m. in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Following the National Overview technical conference, the Commission will hold three regional technical conferences, on dates to be announced, in the following cities:

Eastern Region,[2] Washington, DC
Central Region,[3] St. Louis, MO
Western Region,[4] Denver, CO

The National Overview technical conference will be Commission-led. The regional technical conferences will be staff-led. Commission members may participate in the regional technical conferences.

State, regional and/or federal plans for compliance with the proposed Clean Power Plan may impact FERC-jurisdictional markets, grid operations, and infrastructure. The technical conferences will provide a forum for interested persons to discuss how to address any issues concerning the reliability of the power grid and the efficient operation of wholesale electric markets that may arise in the context of potential state and regional compliance approaches to EPA's Clean Power Plan. Additionally, the technical conferences will provide an opportunity to discuss how compliance scenarios may impact existing infrastructure and drive the need for additional infrastructure, especially new electric transmission and natural gas pipeline facilities, and whether there are regulatory barriers that need to be addressed, and by whom, to ensure the timely development of those facilities.

The National Overview technical conference will include discussion of the following overarching topics: (1) Whether industry participants (state utility and environmental regulators, regulated entities, etc.) have the appropriate tools to identify reliability and/or market issues that may arise; (2) potential strategies for compliance with the EPA regulations and coordination with FERC-jurisdictional wholesale and interstate markets; and (3) how relevant planning entities, industry, and states coordinate reliability and infrastructure planning processes with state and/or regional environmental compliance efforts to ensure the adequate development of new infrastructure and to manage any potential reliability and operational impacts of proposed compliance plans.

Each of the three regional conferences will include discussion of the following topics: (1) Potential reliability impacts in each region under various compliance approaches; (2) potential impacts on power system operations and generator dispatch in each region under various compliance approaches; and (3) potential impact on each region's current or expected infrastructure (electric transmission, natural gas pipelines, generation, etc.) to address compliance with the proposed rule, and additional infrastructure that may be required.

Subsequent notices will be issued detailing the specific agenda and topics

[1] *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,* Notice of Proposed Rulemaking, 79 FR 34,830 (June 18, 2014).

[2] For purposes of this conference, the Eastern Region includes the following Commission-approved Order No. 1000 planning regions: ISO New England, Inc. (ISO–NE), PJM Interconnection, LLC (PJM), New York Independent System Operator (NYISO), Southeastern Regional Transmission Planning (SERTP), South Carolina Regional Transmission Planning (SCRTP), and Florida Reliability Coordinating Council (FRCC). This region also includes the Northern Maine Independent System Administrator (NMISA).

[3] For purposes of this conference, the Central Region includes the following Commission-approved Order No. 1000 planning regions: Midcontinent Independent System Operator Inc. (MISO) and Southwest Power Pool (SPP). (continued . . .)

This region also includes the Electric Reliability Council of Texas (ERCOT).

[4] For purposes of this conference, the Western Region includes all the areas with the Western Interconnection, including the California Independent System Operator (CAISO).

for discussion at the National Overview technical conference, and the date, time, venue and specific agenda and topics for discussion at each regional technical conference. Those interested in attending the National Overview conference are encouraged to register by close of business, February 13, 2015. You may register at the following Web page: *https://www.ferc.gov/whats-new/registration/02-19-15-form.asp.* Subsequent notices will provide details on registration for the regional technical conferences.

Information on the conferences will also be posted on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the conferences. The National Overview technical conference will also be Webcast and transcribed. Anyone with Internet access who desires to listen to this event can do so by navigating to the Calendar of Events at *www.ferc.gov* 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 *www.CapitolConnection.org* or call 703–993–3100. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700 or 1–800–336–6646).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the technical conferences, please contact:

Logistical Information, Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Legal Information, Alan Rukin, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8502, *alan.rukin@ferc.gov.*

Technical Information, Matthew Jentgen, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8725, *matthew.jentgen@ferc.gov.*

Technical Information, Michael Gildea, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8420, *michael.gildea@ferc.gov.*

Dated: December 9, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29950 Filed 12–22–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1138; FRL–9920–81–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Importation of Nonroad Engines and Recreational Vehicles (Renewal)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Importation of Nonroad Engines and Recreational Vehicles (Renewal), (EPA ICR Number 1723.07, OMB Control Number 2060–0320), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through December 31, 2014. Public comments were previously requested via the **Federal Register** (79 FR 37311) on July 1, 2014 during a 60-day comment period. EPA received one comment that was not directly relevant to this renewal. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 22, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–1138, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Compliance Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4288; fax number: 734–214–4869; email address: *pugliese.holly@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This ICR covers the burden associated with EPA Form 3520–21, a declaration form for importers of nonroad vehicles or engines into the United States, which identifies the regulated category of engine or vehicle and the regulatory provisions under which the importation is taking place. In addition, this ICR covers the possible burden of EPA Form 3520–8 if it comes to be used to request final importation clearance for Independent Commercial Importers of nonroad Compression Ignition engines, who would have to bring the engines into compliance and provide test results, comparable to the use of Form 3520–8 for on-road vehicles and engines as covered by OMB 2060–0095. The information is used by Agency enforcement personnel to verify that all nonroad vehicles and engines subject to Federal emission requirements have been declared upon entry or that the category of exclusion or exemption from emissions requirements has been identified in the declaration. The information is used to identify and prosecute violators and to monitor the program in achieving the objectives of the regulations. Forms are required before making customs entry; see 19 CFR 12.73 and 12.74.

Form Number: 3520–21.

Frequency of response: Once per entry (one form per shipment may be used).

Respondents/affected entities: Individual importers, or companies who import and manufacture nonroad engines and recreational vehicles.

Respondent's obligation to respond: Required for any importer to legally import nonroad vehicles or engines into the U.S.

Estimated number of respondents: 12,000.

Total estimated burden: 6,029 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $410,178 (per year), which includes $38,002 annualized capital or operation & maintenance costs.

Changes in Estimates: This is no change the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–30016 Filed 12–22–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9920–56–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, San Joaquin Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the San Joaquin Valley Air Pollution Control District's request to revise its State Operating Permit Programs EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective December 23, 2014.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On February 3, 2012, the San Joaquin Valley Air Pollution Control District (SJVAPCD) submitted an application entitled ''San Joaquin Valley Air Pollution Control District Title V Electronic Reporting System'' for revision of its EPA-authorized authorized Part 70 program under title 40 CFR. EPA reviewed SJVAPCD's request to revise its EPA-authorized Part 70—State Operating Permit Programs program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve the District's request to revise its Part 70—State Operating Permit Programs program to allow electronic reporting under 40 CFR part 70 is being published in the **Federal Register**.

SJVAPCD was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Matthew Leopard,

Acting Director, Office of Information Collection.

[FR Doc. 2014–30036 Filed 12–22–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9920–78–ORD]

Environmental Laboratory Advisory Board (ELAB) Meeting Dates and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference and face-to-face meetings.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB), as previously announced, holds teleconference meetings the third Wednesday of each month at 1:00 p.m. ET and two face-to-face meetings each calendar year. For 2015, teleconference only meetings will be January 21, 2015 at 1:00 p.m. ET; March 18, 2015 at 1:00 p.m. ET; April 15, 2015 at 1:00 p.m. ET; May 20, 2015 at 1:00 p.m. ET; June 17, 2015 at 1:00 p.m. ET; August 19, 2015 at 1:00 p.m. ET; September 16, 2015 at 1:00 p.m. ET; October 21, 2015 at 1:00 p.m. ET; November 18, 2015 at 1:00 p.m. ET; and December 16, 2015 at 1:00 p.m. ET to discuss the ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed by ELAB over these coming meetings include: (1) Issues in continuing the expansion of national environmental accreditation; (2) ELAB support to the Agency on issues relating to measurement and monitoring for all programs; and (3) follow-up on some of ELAB's past recommendations and issues. In addition to these teleconferences, ELAB will be hosting their two face-to-face meetings with teleconference line also available on February 2, 2015 at the Hyatt Regency Crystal City in Crystal City, VA at 1:00 p.m. (ET) and on July 13, 2015 at the Hyatt Regency Chicago in Chicago, IL at 1:00 p.m. (CT).

Written comments on laboratory accreditation issues and/or environmental monitoring or measurement issues are encouraged and should be sent to Ms. Lara P. Phelps, DFO, US EPA (E243–05), 109 T.W. Alexander Drive, Research Triangle Park, NC 27709 or emailed to *phelps.lara@epa.gov.* Members of the public are invited to listen to the teleconference calls, and time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings.

Those persons interested in attending should call Lara P. Phelps at (919) 541–5544 to obtain teleconference information. For information on access or services for individuals with

disabilities, please contact Lara P. Phelps at the number above, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 10, 2014.

Robert Kavlock,

Interim EPA Science Advisor.

[FR Doc. 2014–30090 Filed 12–22–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9920–79–OGC]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), notice is hereby given of a proposed settlement agreement to address lawsuits filed by Oxy Vinyls, LP; The Vinyl Institute, Inc. (''Vinyl Institute''); PolyOne Corp. (now, Mexichem Specialty Resins, Inc.); Saint-Gobain Corp. and CertainTeed Corp. (collectively ''Petitioners'') in the United States Court of Appeals for the District of Columbia Circuit (Case Nos. 12–1260, 12–1265, 12–1266, and 12–1267). Between June 14, 2012 and June 18, 2012, Petitioners filed petitions for review of EPA's final rule entitled ''National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production,'' (April 17, 2012). The proposed settlement agreement establishes deadlines for EPA to take action.

DATES: Written comments on the proposed settlement agreement must be received by January 22, 2015.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2014–0899, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Mark M. Kataoka, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–5584; fax number (202) 564–5603; email address: *kataoka.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

The proposed settlement agreement will partially resolve lawsuits seeking review of EPA's final rule entitled ''National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production,'' 77 FR 22848, April 17, 2012, (''PVC NESHAP'' or ''2012 Rule). On June 18, 2012, Petitioner Vinyl Institute and others petitioned for reconsideration and to stay the 2012 Rule pending reconsideration with EPA, and on September 28, 2012, EPA granted administrative reconsideration of the 2012 Rule on at least Petitioners' claims that the public was not afforded a reasonable opportunity to comment on emission limits in the final 2012 Rule for process wastewater. The proposed settlement agreement states that no later than January 21, 2015, EPA will sign a direct final rule and parallel proposal withdrawing the total non-vinyl chloride organic hazardous air pollutant (''TOHAP'') process wastewater emission limits for new and existing area sources. The proposed settlement agreement provides that to the extent that EPA establishes new TOHAP process wastewater emission limits for existing and new area sources, those emission limits will be set pursuant to the reconsideration process or other separate rulemaking, and not through the direct final or final rule described in the settlement agreement. Under the proposed settlement agreement, if EPA receives adverse comments on and withdraws the direct final rule, EPA will make its best efforts to sign a notice taking final action on the parallel proposal within 15 days of the close of the comment period. In addition, the proposed settlement agreement states that Oxy Vinyls, LP will move to dismiss its petition for review, and the remaining Petitioners will move to dismiss the issue of the existing and new area source TOHAP process wastewater emission limits from their petitions for review within 7 days following the effective date of the direct final rule or a final rule withdrawing the existing and new area source TOHAP process wastewater limits. Nothing in the proposed settlement agreement limits or modifies EPA's discretion under the Clean Air Act in either the related direct final rulemaking process or otherwise.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2014–0899) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or

other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 15, 2014.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2014–30091 Filed 12–22–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 14–50, DA 14–1809]

Congress Extends Television Joint Sales Agreement Compliance Deadline

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this Public Notice, the Media Bureau announces that recently enacted legislation has extended the compliance deadline for parties to certain attributable television joint sales agreements (JSAs) to come into compliance with the Commission's broadcast ownership limits.

DATES: December 19, 2016.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Hillary DeNigro, *Hillary.DeNigro@fcc.gov,* or Benjamin Arden, *Benjamin.Arden@fcc.gov,* of the Industry Analysis Division, Media Bureau, at (202) 418–2330. Press inquiries should be directed to Janice Wise, (202) 418–8165. TTY: (202) 418–7172 or (888) 835–5322.

SUPPLEMENTARY INFORMATION: On April 15, 2014, the Commission released a Report and Order in the 2014 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to section 202 of the Telecommunications Act of 1996. In the Report and Order, the Commission adopted an attribution rule for television JSAs, establishing that same-market television JSAs for more than 15 percent of the weekly advertising time for the brokered station are to be counted toward the brokering station's ownership totals, just as the Commission has long done with respect to radio stations. The Report and Order provided a two-year compliance period—from the effective date of the Report and Order—for parties to same-market JSAs in existence as of the release date whose attribution results in a violation of the broadcast ownership limits to come into compliance with the broadcast ownership rules. Subsequently, the Media Bureau announced that the effective date of the Report and Order was June 19, 2014, and the two-year compliance period would end on June 19, 2016.

The STELA Reauthorization Act of 2014 (STELAR) was enacted on December 4, 2014. In STELAR, Congress provided that licensees with attributable television JSAs ''shall not be considered to be in violation of the ownership limitations [in section 73.3555 of the Commission's rules, 47 CFR 73.3555,] by reason of the application of the [attribution] rule'' until six months after the end of the two-year compliance period adopted by the Commission. The six-month period ends on December 19, 2016.

Federal Communications Commission.

Thomas Horan,

Chief of Staff.

[FR Doc. 2014–30093 Filed 12–22–14; 8:45 am]

BILLING CODE 6712–01–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 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 January 8, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *William C. Hess, individually, and acting in concert with Karen Hess, both of Carroll, Iowa, and Timothy O. Lee,* Coon Rapids, Iowa; to retain control of Community Grain Co., Carroll, Iowa, and thereby indirectly acquire voting shares of Iowa Savings Bank, both in Carroll, Iowa.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Gregory Robert LeGare,* Osseo, Wisconsin; to acquire voting shares of

United Bancorporation, and thereby indirectly gain control of United Bank, Osseo, Wisconsin; Farmers State Bank, Stickney, South Dakota; Clarke County State Bank, Osceola, Iowa; Bank of Poynette, Poynette, Wisconsin; Cambridge State Bank, Cambridge, Wisconsin; and Lincoln Community Bank, Merrill, Wisconsin.

Board of Governors of the Federal Reserve System, December 18, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–30025 Filed 12–22–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 2015.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *IBERIABANK Corporation,* Lafayette, Louisiana; to merge with Georgia Commerce Bancshares, Inc., and thereby indirectly acquire Georgia Commerce Bank, both of Atlanta, Georgia.

Board of Governors of the Federal Reserve System, December 18, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–30024 Filed 12–22–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–15–15IG]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, 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. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

Public Health Associate Program (PHAP) Alumni Assessment—New—Office for State, Tribal, Local, and Territorial Support (OSTLTS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) works to protect America from health, safety and security threats, both foreign and in the U.S. CDC strives to fulfill this mission, in part, through a competent and capable public health workforce. One mechanism to developing the public health workforce is through training programs like the Public Health Associate Program (PHAP).

The mission of the PHAP is to train and provide experiential learning to early career professionals who contribute to the public health workforce. PHAP targets recent graduates with bachelors or masters degrees that are beginning a career in public health.

Each year, a new cohort of up to 200 associates is enrolled in the program. Associates are CDC employees who complete two year assignments in a host site (*i.e.,* a state, tribal, local, or territorial health department or non-profit organization). Host sites design their associates' assignments to meet their agency's unique needs while also providing on-the-job experience that prepare associates for future careers in public health. Associates also receive CDC-based training in core public health concepts and topics to provide the knowledge, skills, and abilities necessary to succeed in their assignments and provide a foundation for a career in public health.

PHAP hosts an initial in-person orientation and annual public health training at CDC and offers long-distance learning opportunities throughout the program. It is the goal of PHAP that following participation in the two-year program, alumni will seek employment within the public health system (*i.e.,*

federal, state, tribal, local, or territorial health agencies, or non-governmental organizations), focusing on public health, population health, or health/healthcare.

When PHAP originated in 2007, the program focused on increasing recruitment and enrollment; to date, there has been no systematic assessment of the program. As a result, one current program priority is focused on documenting program outcomes to inform refinements to program processes and activities, demonstrate program impact, and inform decision making about future program direction. The purpose of this information collection request is to gain approval to follow alumni career progression following participation in PHAP.

The collection will enable the program to demonstrate evidence of program outcomes, specifically to document how many alumni are retained as members of the public health workforce, where alumni are employed, what topical and functional public health areas alumni support (*e.g.,* chronic disease, infectious disease, assessment, communications, etc.), to what extent alumni support the capabilities of public health agencies at the federal, state, territorial, local, tribal, and non-governmental organizational levels, and to what extent PHAP has influenced alumni career paths (if at all).

Information will be used to answer key program assessment questions, specifically: ''Is PHAP a quality program?'', ''Is PHAP an effective program?'', and ''What is the impact of PHAP?''

CDC will administer the PHAP Alumni Assessment at three different time points (1 year post-graduation, 3 years post-graduation, and 5 years post-graduation) to PHAP alumni. Assessment questions will remain consistent at each administration (*i.e.,* 1 year, 3 years, or 5 years post-PHAP graduation). The language, however, will be updated for each assessment administration to reflect the appropriate time period. It is estimated that there will be no more than 500 respondents annually. The estimated time for data collection is eight minutes per assessment administration. Assessments will be administered electronically; a link to the assessment Web site will be provided in the email invitation. The total annualized estimated burden is 67 hours.

There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
PHAP Alumni	PHAP Alumni Assessment	500	1	8/60	67

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–29925 Filed 12–22–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–0891]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

World Trade Center Health Program Enrollment, Appeals & Reimbursement (OMB No. 0920–0891, expires 12/31/2014)—[Revision]—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Title XXXIII of the PHS Act as amended establishes the WTC Health Program within HHS. The Program provides medical monitoring and treatment benefits to responders to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania, and to survivors of the terrorist attacks in New York City. Title XXXIII requires that various Program provisions be established by regulation, including eligibility criteria for responders and volunteers at the Pentagon and in Shanksville, Pennsylvania.

This submission will incorporate the World Trade Center Health Program Enrollment, Appeals & Reimbursement (0920–0891, expiration date 12/31/2014), and the World Trade Center Enrollment & Appeals—Pentagon & Shanksville (0920–1001, expiration date 12/31/2016) into one complete package which will be called the World Trade Center Health Program Enrollment,

Appeals & Reimbursement. Upon OMB approval, 0920–1001 will be discontinued. The provisions in the interim final rule that contain data collection requirements are:

Section 88.5 Application process–status as a WTC responder. This section informs applicants who believe they meet the eligibility criteria for a WTC responder how to apply for enrollment in the WTC Health Program, and describes the types of documentation the WTC Program Administrator will accept as proof of eligibility. We expect that to receive approximately 4,500 applications per year. The burden table reflects the annualized total burden broken into the four separate applicant groups: We estimate that 45 Fire Department of New York (FDNY) responders (1% of applicants); 2,475 general responders (55%); 630 Pentagon/Shanksville responders (14%); and 1,350 survivors (30%) will submit applications. The burden estimates for these three different forms are: FDNY = 23 hours; general responders = 1,238 hours; Pentagon/Shanksville responders = 315 hours; survivors = 405 hours.

Section 88.11 Appeals regarding eligibility determination—responders and survivors. This section establishes the process for appeals regarding eligibility determinations. Of the 4,500 applications we expect to receive per year, we expect that 10% will fail due to ineligibility. We further assume that 10% of those individuals, or 45 respondents, will appeal the decision. The burden estimate is 23 hours.

Section 88.15 Appeals regarding treatment. This section establishes the timeline and process to appeal the Administrator's determinations regarding treatment decisions. HHS estimates that Program participants will request certification for 20,000 health conditions each year. Of those 20,000, we expect that .01 percent (200) will be denied certification by the WTC Program Administrator. We further expect that such a denial will be appealed 30 percent of the time. Of the projected 451,472 enrollees who will receive medical care, it is estimated that .05% percent (26) will appeal decisions of unnecessary treatment. We estimate that the appeals letter will take no more than 30 minutes.

Section 88.16 Reimbursement for travel expenses. This section established the process for members of the Nationwide Provider Network (NPN) who travel more than 250 miles to a nationwide network provider for medically necessary treatment may be provided necessary and reasonable transportation and other expenses. These individuals may submit a travel refund request form, which should take respondents 10 minutes. HHS expects no more than 10 claims per year.

The reporting and record keeping requirements contained in these regulations are used by NIOSH to carry out its responsibilities related to the implementation of the WTC Health Program as required by law. The burdens imposed have been reduced to the absolute minimum considered necessary to permit NIOSH to carry out the purpose of the legislation, *i.e.,* to implement the WTC Health Program. This emergency data collection is warranted because it is essential that individuals who wish to be enrolled, apply to the WTC Health Program, appeal a determination made by the WTC Program Administrator, or submit a claim for reimbursement have the opportunity to do so as soon as the eligibility criteria are established with the publication of this interim final rule. The total annualized burden is 2,319. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
FDNY Responder	World Trade Center Health Program FDNY Responder Eligibility Application.	45	1	30/60
General Responder	World Trade Center Health Program Responder Eligibility Application (Other than FDNY).	2,475	1	30/60
Pentagon/Shanksville Responder	World Trade Center Health Program Pentagon/Shanksville Responder.	630	1	30/60
WTC Survivor	World Trade Center Health Program Survivor Eligibility Application.	1,350	1	30/60
Responder (FDNY and General Responder)/ Survivor.	Denial Letter and Appeal Notification—Eligibility.	45	1	30/60
Responder (FDNY and General Responder)/ Survivor.	Denial Letter and Appeal Notification—Health Conditions.	60	1	30/60
Responder (FDNY and General Responder)/ Survivor.	Denial Letter and Appeal Notification—Treatment.	26	1	30/60
Responder (FDNY and General Responder)/ Survivor.	WTC Health Program Medical Travel Refund Request.	10	1	10/60.

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–29985 Filed 12–22–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

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), National Center for Health Statistics (NCHS) announces the following meeting of the aforementioned committee.

Times and Dates:

11:00 a.m.–5:30 p.m., January 22, 2015

8:30 a.m.–1:00 p.m., January 23, 2015

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-U.S. citizens, pre-approval is required (please contact Gwen Mustaf, 301–458–4500, *glm4@cdc.gov,* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international government. As required by the Federal Property Management Regulations, title 41, Code of Federal Regulation, subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters for Discussion: The agenda will include:

1. Welcome remarks by the Director, NCHS
2. An update on health insurance coverage data
3. A presentation on Statistical Policy Directive No. 1: ''Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units''.

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by January 8, 2015.

The agenda items are subject to change as priorities dictate.

Contact Person for More Information: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4024.

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.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–29963 Filed 12–22–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Grant Reviewer Recruitment Form.

OMB No.: NEW.

Description: The Administration for Children and Families's Children's Bureau (CB) is responsible for administering the review of eligible grant applications submitted in response to funding opportunity announcements issued by CB. CB ensures that the objective review process is independent, efficient, effective, economical, and complies with the applicable statutes, regulations, and policies. Applications are reviewed by subject experts knowledgeable in child welfare and related fields. Review findings are advisory to CB; CB is responsible for making award decisions.

This announcement is a request for approval of the proposed information collection system, the Reviewer Recruitment Module (RRM). CB will use a web-based data collection form and database to gather critical reviewer information in drop down menu format for data such as: degree, occupation, affiliations with organizations and institutions that serve special populations, and demographic information that may be voluntarily provided by a potential reviewer.

These data elements will help CB find and select expert grant reviewers for objective review committees. The web-based system will permit reviewers to access and update their information at will and as needed. The RRM will be accessible by the general public via *https://rrm.grantsolutions.gov/AgencyPortal/cb.aspx.*

Respondents: Generally, our reviewers are current or retired professionals with backgrounds in child welfare and related fields and in some instances current or former foster care parents or clients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Reviewer recruitment module	500	1	.25	125

Estimated Total Annual Burden Hours: 125.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn:

Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–29978 Filed 12–22–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1076]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 22, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0563. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice (OMB Control Number 0910–0563)—Extension

The guidance is intended to provide information to manufacturers of veterinary and human drugs, including human biological drug products, on how to resolve disputes of scientific and technical issues relating to current good manufacturing practice (CGMP). Disputes related to scientific and technical issues may arise during FDA inspections of pharmaceutical manufacturers to determine compliance with CGMP requirements, or during FDA's assessment of corrective actions undertaken as a result of such inspections. The guidance provides procedures that encourage open and prompt discussion of disputes and lead to their resolution. The guidance describes procedures for raising such disputes to the Office of Regulatory Affairs (ORA) and center levels and for requesting review by the dispute resolution (DR) Panel.

When a scientific or technical issue arises during an FDA inspection, the manufacturer should initially attempt to reach agreement on the issue informally with the investigator. Certain scientific or technical issues may be too complex or time consuming to resolve during the inspection. If resolution of a scientific or technical issue is not accomplished through informal mechanisms prior to the issuance of Form FDA 483, the manufacturer can formally request DR and can use the formal two-tiered DR process described in the guidance.

Tier one of the formal DR process involves scientific or technical issues raised by a manufacturer to the ORA and center levels. If a manufacturer disagrees with the tier-one decision, tier-two of the formal DR process would then be available for appealing that decision to the DR panel. The written request for formal DR to the appropriate ORA unit should be made within 30 days of the completion of an inspection, and should include all supporting documentation and arguments for review, as described in this document. The written request for formal DR to the DR Panel should be made within 60 days of receipt of the tier-one decision and should include all supporting documentation and arguments, as described in the following paragraphs.

All requests for formal DR should be in writing and include adequate information to explain the nature of the dispute and to allow FDA to act quickly and efficiently. Each request should be sent to the appropriate address listed in the guidance and include the following:

- Cover sheet that clearly identifies the submission as either a request for tier-one DR or a request for tier-two DR;
- name and address of manufacturer inspected (as listed on FDA Form 483);
- date of inspection (as listed on Form FDA 483);
- date Form FDA 483 issued (from Form FDA 483);
- facility Establishment Identifier Number, if available (from Form FDA 483);
- FDA employee names and titles that conducted inspection (from Form FDA 483);
- office responsible for the inspection (*e.g.,* district office, as listed on Form FDA 483);
- application number if the inspection was a preapproval inspection;
- comprehensive statement of each issue to be resolved:
  - Identify the observation in dispute;
  - clearly present the manufacturer's scientific position or rationale concerning the issue under dispute with any supporting data;
  - state the steps that have been taken to resolve the dispute, including any informal DR that may have occurred before the issuance of Form FDA 483;
  - identify possible solutions; and
  - state expected outcome.
- Name, title, telephone and FAX number, and email address (as available) of manufacturer contact.

The guidance was initiated in response to industry's request for a formal DR process to resolve differences related to scientific and technical issues that arise between investigators and pharmaceutical manufacturers during FDA inspections of foreign and domestic manufacturers. In addition to encouraging manufacturers to use currently available DR processes, the guidance describes the formal two-tiered DR process explained previously. The guidance also covers the following topics:

- The suitability of certain issues for the formal DR process, including examples of some issues with a discussion of their appropriateness for the DR process.
- Instructions on how to submit requests for formal DR and a list of the supporting information that should accompany these requests.
- Public availability of decisions reached during the DR process to promote consistent application and interpretation of drug quality-related regulations.

Description of Respondents: Pharmaceutical manufacturers of

veterinary and human drug products and human biological drug products.

FDA estimates that approximately two manufacturers will submit approximately two requests annually for a tier-one DR and that there will be one appeal of these requests to the DR Panel (request for tier-two DR). FDA estimates that it will take manufacturers approximately 30 hours to prepare and submit each request for a tier-one DR and approximately 8 hours to prepare and submit each request for a tier-two DR. Table 1 provides an estimate of the annual reporting burden for requests for tier-one and tier-two DRs.

In the **Federal Register** of August 11, 2014 (79 FR 46836), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Requests for Tier-One DR	2	1	2	30	60
Requests for Tier-Two DR	1	1	1	8	8
Total					68

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

Dated: December 17, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29917 Filed 12–22–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1104]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; State Petitions for Exemption From Preemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''State Petitions for Exemption from Preemption'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On October 27, 2014, the Agency submitted a proposed collection of information entitled ''State Petitions for Exemption from Preemption'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0277. The approval expires on November 30, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: December 17, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30012 Filed 12–22–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0588]

Compliance Policy Guide Sec. 540.700 Labeling of Processed and Blended Seafood Products Made Primarily With Fish Protein; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of Compliance Policy Guide Sec. 540.700 Labeling of Processed and Blended Seafood Products Made Primarily with Fish Protein (the CPG). The CPG provides guidance for our staff on our labeling requirements for processed and blended seafood products made primarily with fish protein.

DATES: Submit either electronic or written comments on FDA's CPGs at any time.

ADDRESSES: Submit written requests for single copies of the CPG to the Office of Policy and Risk Management, Office of Regulatory Affairs, Office of Global Regulatory Operations and Policy, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the CPG.

Submit electronic comments on the CPG to *http://www.regulations.gov.* Submit written comments on the 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: Catalina Ferre-Hockensmith, Center for Food Safety and Applied Nutrition (HFC–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of revised Compliance Policy Guide Sec. 540.700 Labeling of Processed and Blended Seafood Products Made Primarily with Fish Protein. We are issuing the revisions to the CPG as Level 2 guidance under our good guidance practices regulation (21 CFR 10.115). Consistent with our good guidance practices regulation, we will accept comments on the CPG at any time. The CPG represents our current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

The CPG updates previously issued CPG Sec. 540.700 Processed and/or

Blended Seafood Products, which provides guidance for our staff on labeling requirements for processed and blended seafood products made primarily with fish protein. The CPG has been revised for clarity and format, including the addition of Regulatory Action Guidance and Specimen Charges sections. The CPG contains information that may be useful to the regulated industry and to the public.

II. Comments

Interested persons may submit either written comments regarding the guidance to the Division of Dockets Management (see **ADDRESSES**) or electronic comments regarding the guidance to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/default.htm* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: December 18, 2014.

Melinda K. Plaisir,

Associate Commissioner for Regulatory Affairs, Office of Regulatory Affairs.

[FR Doc. 2014–30015 Filed 12–22–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1696]

Minimal Manipulation of Human Cells, Tissues, and Cellular- and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Minimal Manipulation of Human Cells, Tissues, and Cellular- and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff.'' The draft guidance document provides human cells, tissues, and cellular- and tissue-based product (HCT/P) manufacturers, healthcare providers, and FDA staff with recommendations for meeting the criterion of ''minimal manipulation'' as it applies to HCT/Ps. The draft guidance, when finalized, is intended to supersede the document entitled ''Guidance for Industry and FDA Staff: Minimal Manipulation of Structural Tissue Jurisdictional Update'' dated September 2006. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 23, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002, or to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002, or you may send an email request to the Office of Combination Products (OCP) at *combination@fda.gov.* If you are submitting a written request, send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–7800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Melissa Segal, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, or Angela Krueger, Office of Device Evaluation, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1666, Silver Spring, MD 20993–0002, 301–796–6380, or Leigh Hayes, Office of Combination Products, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Hub 5129, Silver Spring, MD 20993–0002, 301–796–8938.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Minimal Manipulation of Human Cells, Tissues, and Cellular- and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff.'' The draft guidance document provides HCT/P manufacturers, healthcare providers, and FDA staff with recommendations for meeting the 21 CFR 1271.10(a)(1) criterion of minimal manipulation. The draft guidance, when finalized, is intended to supersede the document entitled ''Guidance for Industry and FDA Staff: Minimal Manipulation of Structural Tissue Jurisdictional Update'' dated September 2006. Note that FDA intends to publish a separate draft guidance document on the criterion described in § 1271.10(a)(2), the HCT/P is intended for homologous use only as reflected by the labeling, advertising, or other indications of the manufacturer's objective intent.

HCT/Ps are defined in § 1271.3(d) as articles containing or consisting of human cells or tissues that are intended for implantation, transplantation, infusion, or transfer into a human recipient. FDA has implemented a risk-based approach to the regulation of HCT/Ps. Under the authority of section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264), FDA established regulations for all HCT/Ps to prevent the introduction, transmission, and spread of communicable diseases. These regulations can be found in part 1271. HCT/Ps are regulated solely under section 361 of the PHS Act and part 1271, if they meet all of the following criteria (21 CFR 1271.10(a)):

- The HCT/P is minimally manipulated;
- The HCT/P is intended for homologous use only, as reflected by the labeling, advertising, or other indications of the manufacturer's objective intent;
- The manufacture of the HCT/P does not involve the combination of the cells or tissues with another article, except for water, crystalloids, or a sterilizing, preserving, or storage agent, provided that the addition of water, crystalloids, or the sterilizing, preserving, or storage

agent does not raise new clinical safety concerns with respect to the HCT/P; and

- Either:
  - The HCT/P does not have a systemic effect and is not dependent upon the metabolic activity of living cells for its primary function, or
  - The HCT/P has a systemic effect or is dependent upon the metabolic activity of living cells for its primary function, and is for the following uses:
    - Autologous,
    - Allogeneic, in a first-degree or second-degree blood relative, or
    - Reproductive.

If an HCT/P does not meet all of the criteria set out under § 1271.10(a), the HCT/P will be regulated as a drug, device, and/or biological product under the Federal Food, Drug, and Cosmetic Act, and/or section 351 of the PHS Act (42 U.S.C. 262).

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 1271 have been approved under OMB control number 0910–0543.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/Guidances/default.htm,* or *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm,* or *http://www.fda.gov/CombinationProducts/GuidanceRegulatoryInformation/default.htm,* or *http://www.regulations.gov.* Persons unable to download an electronic copy of the draft guidance entitled ''Minimal Manipulation of Human Cells, Tissues, and Cellular- and Tissue-Based Products; Draft Guidance for Industry and FDA Staff'' may send an email request to *CDRH-guidance@fda.hhs.gov* to receive an electronic copy of the document.

Dated: December 17, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30011 Filed 12–22–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0268]

Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration: Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration.'' The document provides guidance to industry on how to label bottled or otherwise packaged beers that are subject to FDA's labeling laws and regulations. This guidance is being issued in light of the ruling by the Alcohol and Tobacco Tax and Trade Bureau (TTB) (formerly the Bureau of Alcohol, Tobacco, and Firearms) (TTB Ruling 2008–3, dated July 7, 2008) clarifying that certain beers do not meet the definition of a ''malt beverage'' under the Federal Alcohol Administration Act (FAA Act). Because these beers are not subject to the labeling provisions of the FAA Act, they are subject to the labeling provisions of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the guidance to the Office of Nutrition, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 17, 2009 (74 FR 41438), we announced the availability of a draft guidance entitled ''Guidance for Industry; Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request'' and gave interested parties an opportunity to submit comments on the draft guidance at any time and comments on the proposed collection of information by October 16, 2009. We received one comment which we reviewed and evaluated. On our own initiative, we added a reference to the nutrition labeling requirements for certain beers and other alcohol beverages served in restaurants or similar retail food establishments, under FDA's final rule for menu labeling which appeared in the **Federal Register** on December 1, 2014 (79 FR 71156). We also clarified that the guidance pertains to bottled or otherwise packaged beers subject to our jurisdiction. We are issuing the guidance with no substantive changes.

The final guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents our current thinking on the labeling of certain

bottled or otherwise packaged beers subject to our jurisdiction. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control number 0910–0728.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see ADDRESSES). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Always access an FDA guidance document using FDA's Web site listed previously to find the most current version of the guidance.

V. References

The following references have been placed on display in the Division of Dockets Management (see ADDRESSES) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified all the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register.**)

1. TTB Ruling 2008–3, July 7, 2008, available at: *http://www.ttb.gov/rulings/2008–3.pdf.*

2. Memorandum of Understanding 225–88–2000 between FDA and Bureau of Alcohol, Tobacco and Firearms, available at: *http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/DomesticMOUs/ucm116370.htm.*

Dated: *December 17, 2014.*

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29988 Filed 12–22–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; NIMH Data Repositories Data Submission Request; NIMH Data Repositories Data Access and Use Certification

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 7, 2014, page 60479 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Mental Health (NIMH), 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.

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: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment 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.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, OSPPC, NIMH, NIH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Rockville Pike, Bethesda, MD 20892, or call 301–443–4335 or Email your request, including your address to: *nimhprapubliccomments@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection

NIMH Data Repositories (NDR) Data Submission Request—Revision 0925–0667; the NIMH Data Repositories Data Access and Use Certification—National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Institutes of Mental Health (NIMH) Data Repositories are a group of Federal data repositories based on an informatics platform for human-subjects research domains related to mental health, initially established as the National Database for Autism Research (NDAR) to support autism-related research. In 2013, NIMH received approval from OMB for use of the NIMH Data Access Request and Use Certification (DUC) Form to meet the unique data access needs of all existing NIMH data repositories, which at the time consisted of NDAR, Pediatric MRI (PedsMRI), and the NIMH Clinical Research Datasets (NCRD)—OMB# 0925–0667 (Expiration: 09/30/2016). Now in 2014, two new databases have been added and integrated into the NDAR infrastructure, NDCT and RDoCdb. At this time, NIMH is seeking OMB approval to add an all-purpose NIMH Data Repositories Data Submission Request Form and to revise the all-purpose NIMH Data Repositories Data Access and Use Certification Form. As the data repositories have matured, and with the introduction of the new databases—namely NDCT and RDoCdb—the information being collected for data submission has become more complex, rendering an OMB-approved submission form a new necessity.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 221.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	A. Estimates annual burden hours			
	Number of respondents	Frequency of response	Average time per response (in hours)	Annual burden hour
NIMH Data Repositories Data Submission Request Form	40	1	95/60	63
NIMH Data Repositories Data Access and Use Certification Form	100	1	95/60	158

Dated: December 15, 2014.

Keisha Shropshire,

NIMH Project Clearance Officer, NIMH, NIH.

[FR Doc. 2014–30057 Filed 12–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; The NIH/NCATS GRDR[SM] Program: Global Rare Diseases Patient Registry Data Repository (GRDR)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 30, 2014, page 44185 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Center for Advancing Translational Sciences (NCATS), 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.

DATES: *Comment 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.

ADDRESSES: 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: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project contact: Dr. Yaffa Rubinstein, Director of Patient Resources for Clinical and Translational Research at the Office of Rare Diseases Research (ORDR), NCATS, NIH, Suite 1004, 6701 Democracy Boulevard, Bethesda, MD 20892–4874, or call non-toll-free number (301) 402–4338 or Email your request, including your address to: *yaffa.rubinstein@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Proposed Collection: NIH/NCATS GRDR[SM] Program: Global Rare Diseases Patient Registry Data (GRDR), The National Center for Advancing Translational Sciences (NCATS), National Institutes of Health (NIH).

Need and Use of Information Collection: The NIH created the GRDR program *https://grdr.ncats.nih.gov* an informatics system and central data repository, housed at the NCATS/NIH Center to support and accelerate research in the cause, diagnosis, and treatment of rare diseases. The GRDR program collects a wide range of data types, including phenotypic and clinical information, as well as medical images, derived from individuals who participate in rare disease patient registries, regardless of the source of funding. The GRDR program provides the infrastructure to store, search across, retrieve, and analyze these varied types of data. This valuable information will help NIH understand and evaluate the use of repositories/datasets in the research community. The GRDR program will support: (1) Mapping data to standards; (2) increased visibility for participating registries; (3) opportunity for cross-disease research; (4) better and faster rare disease clinical research.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 133.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Request for Open	Individuals	2000	1	1/60	33
Request for Controlled	Individuals	1000	1	5/60	83
Request to Submit	Individuals	100	1	10/60	17

Dated: December 9, 2014.

Pamela McInnes,

Deputy Director, NCATS, NIH.

[FR Doc. 2014–29640 Filed 12–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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: Center for Inherited Disease Research Access Committee.

Date: January 16, 2015.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camilla E. Day, Ph.D., Scientific Review Officer CIDR, National Human Genome Research Institute National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 31–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 17, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30008 Filed 12–22–14; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Research Training.

Date: January 14, 2015.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles Joyce, Ph.D. Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288 *cjoyce@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: December 17, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy

[FR Doc. 2014–30007 Filed 12–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; R13 Conference Review.

Date: January 5, 2015.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 17, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30006 Filed 12–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel Center for Biomaterials and Biofabricated Platforms (2015/05).

Date: March 3–5, 2015.

Time: 7:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: College Park Marriott Hotel & Conference Center, 3501 University Blvd., East Hyattsville, MD 20783.

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, (301) 451–3398, *hayesj@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, P41 MRI center (2015/05).

Date: March 23–25, 2015.

Time: 6:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Courtyard San Francisco Downtown, 299 2nd St., San Francisco, CA 94105.

Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov.*

Dated: December 17, 2014.

David Clary

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30004 Filed 12–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Pathology Support for The National Toxicology Program and The Division of Intramural Research, NIEHS.

Date: January 15–16, 2015.

Time: 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Garden Inn Durham Southpoint, 7007 Fayetteville Road, Durham, NC 27713.

Contact Person: RoseAnne M. McGee, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training Nat. Institute of Environmental Health, Sciences P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709 (919) 541–0752 *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 17, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30005 Filed 12–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group Clinical, Integrative and Molecular Gastroenterology Study Section.

Date: January 26–27, 2015

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Mushtaq A. Khan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@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: December 17, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30009 Filed 12–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Various Contract Related Forms That Will Be Included in the Homeland Security Acquisition Regulation, DHS Form 0700–01, DHS Form 0700–02, DHS Form 0700–03, DHS FORM 0700–04

AGENCY: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

ACTION: 30-day notice and request for comments; extension without change, 1600–0002.

SUMMARY: The Department of Homeland Security, Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on Monday, October 6, 2014 at 79 FR 60178 for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until January 22, 2015. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: This information collection under the HSAR is necessary in order to implement applicable parts of the FAR (48 CFR). The four forms under this collection of information request are used by offerors, contractors, and the general public to comply with requirements in contracts awarded by the Department of Homeland Security (DHS). The four

forms are DHS Form 0700–01, Cumulative Claim and Reconciliation Statement; DHS Form 0700–02, Contractor's Assignment of Refund, Rebates, Credits and Other Amounts; DHS Form 0700–03, Contractor's Release; and DHS Form 0700–04, Employee Claim for Wage Restitution. These four forms will be used by contractors and/or contract employees during contract administration.

The information will be used by DHS contracting officers to ensure compliance with terms and conditions of DHS contracts and to complete reports required by other Federal agencies such as the General Services Administration and the Department of Labor. If this information is not collected, the DHS could inadvertently violate statutory or regulatory requirements and the DHS's interest concerning inventions and contractor's claims would not be protected.

There has been an increase in the estimated annual burden hours previously reported for this collection. An adjustment in annual burden is necessary at this time in the amount of 902 actions and hours. The initial annual burden was based on a lower number of contract actions which related to the fact that DHS was a new agency with consolidated acquisition procedures, processes, and policies. Although, there is an increase in the estimated burdened hours, there is no change in the information being collected.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

Title: Various Contract Related Forms That Will Be Included in the Homeland Security Acquisition Regulation.

OMB Number: 1600–0002.

Frequency: On Occasion.

Affected Public: Private Sector.

Number of Respondents: 9537.

Estimated Time per Respondent: 1 hours.

Total Burden Hours: 9537.

Dated: December 11, 2014.

Carlene C. Ileto,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2014–30084 Filed 12–22–14; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Regulation on Agency Protests

AGENCY: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

ACTION: 30-Day Notice and request for comments; Extension without Change, 1600-0004.

SUMMARY: The Department of Homeland Security, Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35 DHS previously published this information collection request (ICR) in the **Federal Register** on Monday, October 6, 2014 at 79 FR 60178 for a 60-day public comment period. One comment was received by DHS. The purpose of this notice is to allow additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 22, 2015. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: The Federal Acquisition Regulation (FAR); 48 CFR Chapter 1 provides general procedures on handling protests submitted by contractors to federal agencies. This regulation provides detailed guidance for contractors doing business with acquisition offices within the Department of Homeland Security (DHS) to implement the FAR. FAR Part 33.103, Protests, Disputes, and Appeals prescribe policies and procedures for filing protests and for processing contract disputes and appeals.

DHS will not be asking for anything outside of what is already required in the FAR. Should anything outside the FAR arise, DHS will submit a request for Office of Management and Budget (OMB) approval. The prior information collect request for OMB No. 1600–004 was approved through May 31, 2014 by OMB in a Notice of OMB Action.

The information being collected will be obtained from contractors as part of their submissions whenever they file a bid protest with the Department's Components. The information will be used by DHS officials in deciding how the protest should be resolved. Failure to collect this information would result in delayed resolution of agency protests.

According to Federal Procurement Data System (FPDS), the number of protest has increased each year over the past two years in annual respondent and burden hours. This increase in current protest activity is not the result of a deliberate program change, but from a new estimate of actions that are not controllable by the Federal government. Although, the number of protest has increased, there has not been any change in the information being collected.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submissions of responses.

Analysis

AGENCY: Office of Chief Procurement Officer, Acquisition Policy and Legislation
Office, DHS
Title: Regulation on Agency Protests
OMB Number: 1600–0004
Frequency: Annually
Affected Public: Private Sector
Number of Respondents: 95
Estimated Time per Respondent: 2 hours
Total Burden Hours: 190

Dated: December 11, 2014.

Carlene C. Ileto,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2014–30080 Filed 12–22–14; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0007]

Agency Information Collection Activities: Application for Allowance in Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Allowance of Duties. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S. C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application for Allowance in Duties
OMB Number: 1651–0007
Form Number: Form 4315
Abstract: CBP Form 4315, ''Application for Allowance in Duties,'' is submitted to CBP in instances of claims of damaged or defective imported merchandise on which an allowance in duty is made in the liquidation of the entry. The information on this form is used to substantiate an importer's claim for such duty allowances. CBP Form 4315 is authorized by 19 U.S.C. 1506 and provided for by 19 CFR 158. This form is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%204315_0.pdf*
Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to Form 4315.
Type of Review: Extension (without change)
Affected Public: Importers
Estimated Number of Respondents: 12,000
Estimated Number of Total Annual Responses: 12,000
Estimated Time per Response: 8 minutes
Estimated Annual Burden Hours: 1,600

Dated: December 17, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–29977 Filed 12–22–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0100]

Agency Information Collection Activities: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred (CBP Form 4609). CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred.

OMB Number: 1651–0100.

Form Number: Form 4609.

Abstract: CBP Form 4609, Petition for Remission or Mitigation of Forfeitures and Penalties Incurred, is completed and filed with the CBP Port Director by individuals who have been found to be in violation of one or more provisions of the Tariff Act of 1930, or other laws administered by CBP. Persons who violate the Tariff Act are entitled to file a petition seeking mitigation of any statutory penalty imposed or remission of a statutory forfeiture incurred. This petition is submitted on CBP Form 4609. The information provided on this form is used by CBP personnel as a basis for granting relief from forfeiture or penalty. CBP Form 4609 is authorized by 19 U.S.C. 1618 and provided for by 19 CFR 171.11. It is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%204609.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with a change to the burden hours resulting from updated estimates of the number of responses. There are no changes to the information collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,610.

Estimated Number of Total Annual Responses: 1,610.

Estimated Time per Response: 14 minutes.

Estimated Annual Burden Hours: 376.

Dated: December 17, 2014,

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–29945 Filed 12–22–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0137]

Agency Information Collection Activities: Small Vessel Reporting System

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Small Vessel Reporting System (SVRS). CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10h Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Small Vessel Reporting System

OMB Number: 1651–0137

Abstract: The Small Vessel Reporting System (SVRS) is a pilot program that allows certain participants using small pleasure boats to report their arrival telephonically instead of having to appear in person for inspection by a CBP officer each time they enter the United States. In some cases, a participant may also be asked to report to CBP for an in person inspection upon arrival. Participants may be U.S. citizens, U.S. lawful permanent residents, Canadian citizens, and permanent residents of Canada who are nationals of Visa Waiver Program countries listed in 8 CFR 217.2(a). In addition, participants of one or more Trusted Traveler programs and current Canadian Border Boater Landing Permit (CBP Form I–68) holders may participate in SVRS.

In order to register for the SVRS pilot program, participants enter data via the SVRS Web site, which collects information such as biographical information and vessel information. Participants will go through the in person CBP inspection process during SVRS registration, and in some cases, upon arrival in the United States.

For each voyage, SVRS participants will be required to submit a float plan about their voyage via the SVRS Web site in advance of arrival in the United States. The float plan includes vessel information, a listing of all persons on board, estimated dates and times of departure and return, and information on the locations to be visited on the trip. Participants in SVRS can create a float plan for an individual voyage or a template for a float plan that can be used multiple times.

SVRS is authorized by 8 U.S.C. 1103, 8 U.S.C. 1225, 8 U.S.C. 1365b, 8 CFR 235.1, 19 U.S.C. 1433, 19 U.S.C. 1498, and 19 CFR 4.2. The SVRS Web site is accessible at: *https://svrs.cbp.dhs.gov/.*

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours resulting from updated estimates of the number of respondents. There is no change to the information being collected.

Type of Review: Extension (with change)

Affected Public: Individuals

SVRS Application

Estimated Number of Respondents: 7,509

Estimated Number of Total Annual Responses: 7,509

Estimated Time per Response: 15 minutes

Estimated Total Annual Burden Hours: 1,877

Float Plan

Estimated Number of Respondents: 2,589

Estimated Number of Total Annual Responses: 2,589

Estimated Time per Response: 10.6 minutes

Estimated Total Annual Burden Hours: 457

Dated: December 17, 2014,

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–29944 Filed 12–22–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0031]

Agency Information Collection Activities: Foreign Assembler's Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Foreign Assembler's Declaration (with Endorsement by Importer). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Foreign Assembler's Declaration (with Endorsement by Importer).

OMB Number: 1651–0031.

Abstract: In accordance with 19 CFR 10.24, a Foreign Assembler's Declaration must be made in connection with the entry of assembled articles under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS). This declaration includes information such as the quantity, value and description of the imported merchandise. The declaration is made by the person who performed the assembly operations abroad and it includes an endorsement by the importer. The Foreign Assembler's Declaration is used by CBP to determine whether the operations performed are within the purview of subheading 9802.00.80, HTSUS and therefore eligible for preferential tariff treatment.

19 CFR 10.24(c) and (d) require that the importer/assembler maintain records for 5 years from the date of the related entry and that they make these records readily available to CBP for audit, inspection, copying, and reproduction. Instructions for complying with this regulation are posted on the CBP.gov Web site at: *http://www.cbp.gov/trade/trade-community/outreach-programs/trade-agreements/nafta/repairs-alterations/subchpt-9802.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents/Recordkeepers: 2,730.

Estimated Time per Response/Recordkeeping: 55 minutes.

Estimated Number of Responses/Recordkeeping per Respondent: 128.

Estimated Total Annual Burden Hours: 320,087.

Dated: December 17, 2014,

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–29974 Filed 12–22–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–111]

30-Day Notice of Proposed Information Collection: Local Appeals to Single-Family Mortgage Limits

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 22, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette Pollard @hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 9, 2014.

A. Overview of Information Collection

Title of Information Collection: Local Appeals to Single-Family Mortgage Limits.

OMB Approval Number: 2502–0302.

Type of Request: Extension.

Form Number: N/A.

Description of the need for the information and proposed use: Any interested party may submit a request for the mortgage limits to be increased in a particular area if they believe that the present limit does not accurately reflect the higher sales prices in that area. Any request for an increase must be accompanied by sufficient housing sales price data to justify higher limits. This allows HUD the opportunity to examine additional data to confirm or adjust the set loan limit for a particular area.

Respondents: Business and other for-profit.

Estimated Number of Responses: 10.

Frequency of Response: 1.

Average Hours per Response: 7.

Total Estimated Burdens: 70.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 17, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–30068 Filed 12–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–110]

30-Day Notice of Proposed Information Collection: Construction Complaint/ Request for Financial Assistance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 22, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette Pollard @hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 12, 2014.

A. Overview of Information Collection

Title of Information Collection: Construction Complaint/Request for Financial Assistance.

OMB Approval Number: 2502–0047.

Type of Request: Extension.

Form Number: HUD 92556.

Description of the need for the information and proposed use: The information collection is submitted by homeowners and is used by HUD to identify the items of complaint in order to help the homeowner obtain correction.

Respondents: Application for benefits.

Estimated Number of Responses: 10.

Estimated Number of Responses: 10.

Frequency of Response: 1 per mortgage.

Average Hours per Response: .5.

Total Estimated Burdens: 5.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 17, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–30072 Filed 12–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–113]

30-Day Notice of Proposed Information Collection: Capital Needs Assessments—CNA e Tool

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 22, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *Email: OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette Pollard @hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 12, 2014.

A. Overview of Information Collection

Title of Information Collection: Capital Needs Assessments—CNA e Tool.

OMB Approval Number: 2502–0505.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: A Capital Needs Assessment is a detailed review of a property's emergent and expected capital expenses over future years, a span of time known as the ''estimate period.'' It is needed in order to appropriately value a property to determine if the property is financially sustainable and to plan funding of an escrow account for payment of capital repair and replacement needs during the estimate period. It is used by mortgage lenders and property owners, developers and HUD for valuation, underwriting and asset management purposes.

Respondents: Capital Needs Assessments will be submitted by property owners, buyers and mortgage lenders for multifamily housing when applying for mortgage loans or loan guarantees from the United States Department of Agriculture, loan guarantees from HUD, assisted housing providers receiving Section 8 subsidy or those who received HUD assistance in the past.

Estimated Number of Responses: 3,792.

Estimated Number of Responses: 3,792.

Frequency of Response: 1.

Average Hours per Response: 40.

Total Estimated Burdens: 151,680.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 17, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–30062 Filed 12–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–109]

Notice of Emergency Approval of an Information Collection: CDBG–DR Expenditure Deadline Waiver Request Template (Pub. L. 113–2 Grantees Only)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 22, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Report Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, email at *Colette Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: CDBG–DR Expenditure Deadline Waiver

Request Template (Pub. L. 113–2 Grantees Only).

OMB Approval Number: 2506—New.

Type of Request: New collection.

Form Number: NA.

Description of the need for the information and proposed use: This information collection is being conducted by CPD Office of Block Grant Assistance to assist the Administrator of HUD in determining, as required by section 904(c) under Title IX of the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2, enacted January 29, 2013), whether to grant waivers of the twenty-four month expenditure deadline for grantees (Entitlement communities, States and units of general local governments) receiving funds under the Act.

Respondents (describe): Entitlement communities, Nonprofits, States and units of general local governments with Community Development Block Grant (CDBG) disaster recovery grants pursuant to the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2). Thirty-four (34) CDBG–DR grantees are held to the 24-month requirement and are thus eligible to submit information through this template to request an extension.

CHART 1—2-YEAR EXPENDITURE DEADLINE WAIVER REQUEST

Information collection	Number of respondents	Frequency of response	Total responses	Burden hour per response	Total burden hours	Hourly cost per response	Total cost
CDBG–DR Expenditure Deadline Waiver Request Template (Pub. L. 113–2 Grantees Only)	34	3	102	24	2,448	$24.34	$59,584.32

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 17, 2014.

Colette Pollard,

Departmental Reports Manager.

[FR Doc. 2014–30073 Filed 12–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5789–N–03]

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2014

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on July 1, 2014, and ending on September 30, 2014.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the third quarter of calendar year 2014.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary

granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from July 1, 2014 through September 30, 2014. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the third quarter of calendar year 2014) before the next report is published (the fourth quarter of calendar year 2014), HUD will include any additional waivers granted for the third quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: December 17, 2014.

Helen R. Kanovsky,

General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development July 1, 2014 Through September 30, 2014

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 51.104(b)(2).

Project/Activity: The Federal Housing Commissioner in the Office of Housing requested a waiver 24 CFR 51.104(b)(2) in order to facilitate the construction of the Y-Site apartments, a 199 unit facility in Gaithersburg, MD adjacent to the Gaithersburg MARC (Maryland Area Commuter Rail) station using HUD Section 221(d)(4) program.

Nature of Requirement: The regulation at 24 CFR 51.104(b)(2) requires an environmental impact statement for projects in unacceptable noise zones. The Assistant Secretary may waive the EIS requirement in cases where noise is the only environmental issue and no outdoor noise sensitive activity will take place on the site. In such cases, an environmental review shall be made pursuant to the requirements of 24 CFR parts *50.*

Granted By: Clifford Taffet, Acting Assistant Secretary for Community Planning and Development.

Date Granted: July 15, 2014.

Reason Waived: The project will further the HUD mission and will advance HUD program goals to develop viable, sustainable communities and affordable housing. The construction of the units will adequately protect the interiors, and no outdoor, noise-sensitive uses will occur in the exposed space. Based on the environmental assessments, no adverse environmental impact will result from this development in an unacceptable noise zone.

Contact: James Potter, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7250, Washington, DC 20410, telephone (202) 402–4610.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The Acting Administrator for the Eastern/Woodlands Office of Native American Programs requested a waiver of 24 CFR 58.22(a) in order to facilitate construction of two basketball courts, a picnic pavilion and a fitness center by the ISWA Development Corporation—Catawba Nation in Rock Hill, SC.

Nature of Requirement: A regulatory waiver is required because the ISWA Development Corporation committed non-HUD funds for the construction contract prior to HUD approval of a Request for Release of Funds in violation of the regulation at 58.22(a).

Granted By: Clifford Taffet, Acting Assistant Secretary for Community Planning and Development.

Date Granted: September 4, 2014.

Reason Waived: The above project will further the HUD mission and will advance HUD program goals to develop viable, quality communities. Although the errors were made in the environmental review process, the fitness center, basketball courts and the pavilion will help the community by providing a safe and a suitable area for sports, entertainment and physical fitness. The property was rehabilitated in good faith and ISWA did not willfully violate the applicable regulations; no HUD funds were committed to the construction contract; and based on the environmental assessment, and a field inspection concluded that granting a waiver for this project will not result in any unmitigated, adverse environmental impact.

Contact: Nelson A. Rivera, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7250, Washington, DC 20410, telephone (202) 402–4455.

• *Regulation:* 24 CFR 570.208(a)(l)(vi).

Project/Activity: Fresno County, CA requested a waiver of 24 CFR 570.208(a)(l)(vi) allow the use of prior Low and Moderate Income Summary Data for two infrastructure activities in order to demonstrate compliance with the low- and moderate-income benefit national objective requirements.

Nature of Requirement: 24 CFR 570.208(a)(l)(vi) requires that the most recently available decennial census information must be used to the fullest extent feasible, together with the section 8 income limits that would have applied at the time the income information was collected by the Census Bureau, to determine whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by a CDBG funded activity. The HUD-produced Low and Moderate Income Summary Data provide this data to grantees. On June 10, 2014, HUD issued new Low and Moderate Income Summary Data, with an effective date of July 1, 2014 for use by grantees.

Granted By: Clifford Taffet, Acting Assistant Secretary for Community Planning and Development.

Date Granted: September 26, 2014.

Reason Waived: Two infrastructure activities, which had been in the planning stage for many months, were included in the county's FY 2014 Annual Action Plan. However, funds were not obligated by the county to these activities prior to July 1, 2014. The county documented that the available Low and Moderate Income Summary data covered an area larger than the actual service areas for the two activities, and was not representative of the income characteristics of the activity service area residents. The county would incur further delays and additional costs to conduct special surveys to qualify the service areas of the two activities. The waiver allowed the county to continue to use the prior Low and Moderate Income Summary Data to demonstrate compliance with the low- and moderate-income benefit national objective requirements.

Contact: Steve Johnson, Director of Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban

Development, 451 Seventh Street SW., Room 7282, Washington, DC 20410, telephone (202) 402–4548.

• *Regulation:* 24 CFR 91.105(c)(2).

Project/Activity: Snohomish County, WA requested a waiver of 24 CFR 91.105(c)(2) to permit a three day public comment period for citizen review of use of Community Development Block Grant (CDBG) funds to assist in recovering from a presidentially declared disaster in 2014 resulting from mudslides.

Nature of Requirement: The provision of 24 CFR 91.105(c)(2) requires that grantees provide a period of not less than 30 days during which affected citizens may review and comment on the substantial amendment prior to its implementation.

Granted By: Clifford Taffet, Acting Assistant Secretary for Community Planning and Development.

Date Granted: September 17, 2014.

Reason Waived: The Department provided $1,500,000 in Community Development Block Grant (CDBG) funds to assist Snohomish County in recovering from a presidentially declared disaster in 2014 resulting from mudslides. The period of availability for obligation for some of the funds being provided to the county expired on September 30, 2014. The county could not complete its citizen participation and amendment process before September 30 within the 30-day period specified in the Consolidated Plan regulations. This waiver allowed a minimum three (3) day public comment period for Snohomish County's substantial amendment to its Consolidated Plan.

Contact: Steve Johnson, Director of Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7282, Washington, DC 20410, telephone (202) 402–4548.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

•*Regulation:* 24 CFR 200.85(b).

Project/Activity: Riverside Park Apartments, Phase II, West Memphis, Arkansas Project Number: 082–11124.

Nature of Requirement: HUD's regulation at 24 CFR 200.85(b) requires the mortgage contain ''[a] covenant against repayment of a Commissioner approved inferior lien from mortgage proceeds other than surplus cash or residual receipts, except in the case of an inferior lien created pursuant to Section 223(d) of the Act [National Housing Act], or a supplemental loan insured pursuant to Section 241 of the Act.''

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 10, 2014.

Reason Waived: The project consists of 8 two-story buildings with 64 units, built on a 7.29 acre site with 97 percent occupancy as of the Lender's underwriting, dated 12/3/13. The Borrower and the Management agent have extensive experience with over 100 properties, including HUD properties, through the Low-Income Housing Tax Credit (LIHTC) program in development, constructing and management of affordable residential housing. Substantial rehabilitation was recently completed on Phase I of the property where major components such as the HVAC, roof, cabinets, plumbing, appliances and windows were replaced. The Partnership obtained a $450,000 loan from the Arkansas Development Finance Authority (ADFA) through the HOME Investment Partnerships Program and executed a Promissory Note to repay this loan. The Borrower executed a deed restriction under the HOME Investment Partnerships Program Agreement, which qualifies the property as affordable housing for a minimum of 35 years. The property will accept residents with Section 8 vouchers. Riverside Park Apartment's existing loan and operations are performing well and has sufficient cash flow after debt service payments for both the FHA insured loan and the HOME loan.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6230, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24CFR 200.85(b).

Project/Activity: Riverside Park Apartments, Phase I, West Memphis, Arkansas Project Number: 082–11123.

Nature of Requirement: HUD's regulation at 24 CFR 200.85(b) requires the mortgage contain ''[a] covenant against repayment of a Commissioner approved inferior lien from mortgage proceeds other than surplus cash or residual receipts, except in the case of an inferior lien created pursuant to Section 223(d) of the Act [National Housing Act], or a supplemental loan insured pursuant to Section 241 of the Act.''

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 11, 2014.

Reason Waived: The Partnership obtained a $450,000 loan from the Arkansas Development Finance Authority (ADFA) through the HOME Investment Partnerships Program and executed a Promissory Note to repay this loan. The Borrower executed a deed restriction under the HOME Investment Partnerships Program Agreement, which qualifies the property as affordable housing for a minimum of 35 years. The project consists of 8 two-story buildings with 64 units, built on a 7.29 acre site with 97 percent occupancy as of the Lender's underwriting, dated 12/3/13. The Borrower and the Management agent have extensive experience with over 100 properties, including HUD properties, through the Low-Income Housing Tax Credit (LIHTC) program in development, constructing and management of affordable residential housing. Substantial rehabilitation was recently completed on Phase I of the property where major components such as the HVAC, roof, cabinets, plumbing, appliances and windows were replaced. The property will accept residents with Section 8 vouchers. Riverside Park Apartment's existing loan and operations are performing well and has sufficient cash flow after debt service payments for both the FHA insured loan and the HOME loan.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6230, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 200.85(b).

Project/Activity: Brent Place/Essex House Apartments; FHA Project Number: 051–35642; City, State: Alexandria, Virginia. Owner requested a regulatory waiver as part of their participation in the Energy Efficiency Pilot Initiative Utilizing Energy Performance Contracting Loan Subordination.

Nature of Requirement: HUD's regulation at 24 CFR 200.85(b) requires the mortgage contain ''[a] covenant against repayment of a Commissioner approved inferior lien from mortgage proceeds other than surplus cash or residual receipts, except in the case of an inferior lien created pursuant to Section 223(d) of the Act [National Housing Act], or a supplemental loan insured pursuant to Section 241 of the Act.''

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 29, 2014.

Reason Waived: The granted waiver of 24 CFR 200.85(b) facilitates payment of the inferior lien from a source other than surplus cash or Residual Receipts. The inferior lien will be paid over a 10 year period from the increased revenues that result from the energy savings. The requested waiver is required to facilitate the implementation of the Energy Efficiency Pilot Initiative Utilizing Energy Performance Contracting at the subject property. The Pilot is intended to improve energy and water efficiency in multifamily housing and address the difficulty that existing multifamily properties have in accessing financing for energy and water saving improvements. By granting the regulatory waiver, the property will achieve energy savings through several water and energy efficiency improvements (*e.g.* replacement of existing fixtures with low flow faucet aerators, occupancy sensors to control lighting in common areas, high/low limiting thermostats, etc.).

Contact: Lauryn Alleva, Program Analyst, Office of Multifamily Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6112, Washington, DC 20410, telephone (202) 402–2609.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Sycamore Groves Apartments, FHA Project Number 084–44154, Kansas City, Missouri. The owners have requested deferral of repayment of the Flexible Subsidy Operating Assistance Loan on this project due to their inability to repay the loan in full upon prepayment of the 236 Loan.

Nature of Requirement: The regulation at 24 CFR 219.220(b) [1995], which governs the

repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects, states ''[a]ssistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 4, 2014.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan to allow the much needed preservation and moderate rehabilitation of the project. The project will be preserved as an affordable housing resource of Kansas City, Missouri.

Contact: Minnie Monroe-Baldwin, Branch Chief, Affordable Housing Transaction, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6222, Washington, DC 20410, telephone (202) 402–2636.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Terrace Hills Apartments FHA Number 102–44001T is a 54-unit apartment style project for low-income families. The mortgage was insured pursuant to Section 236(j)(1) of the National Housing Act and was endorsed on May 4, 1970, in the amount of $782,100 at eight and one half percent interest. The project's Section 236 mortgage matured on January 1, 2012.

Nature of Requirement: The regulation at 24 CFR 219.220(b)(1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects, states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 14, 2014.

Reason Waived: Therefore, 24 CFR 219.220(b)(1995) is hereby waived to permit the deferment of repayment of the outstanding Flexible Subsidy Loan, plus accrued interest, and to permit the Owner to repay the Loan through a repayment plan.

Contact: James Wyatt, Program Manager, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6168, Washington, DC 20410, telephone (202) 402–2519.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Glynn Courtyard Apartments FHA Number 022–44007T is a 69-unit multifamily project originally developed in 1971 with a mortgage insured pursuant to Section 236(j)(1) of the National Housing Act, which matured in January 2012 and is paid in full.

Nature of Requirement: The regulation at 24 CFR 219.220(b)(1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects, states ''Assistance that has been paid to a project Owner under this subpart must be repaid at the earlier of expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 8, 2014.

Reason Waived: Therefore, 24 CFR 219.220(b)(1995) is hereby waived to permit the deferment of repayment of the outstanding Flexible Subsidy Loan, plus accrued interest, and to permit the Owner to repay the Flexible Subsidy Loan through a repayment plan.

Contact: James Wyatt, Program Manager, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6168, Washington, DC 20410, telephone (202) 402–2519.

• *Regulation:* 24 CFR 241.16(a)(2).

Project/Activity: Kaleida Health (KH) is a not-for-profit health system that owns and operates four hospitals with an aggregate of 998 licensed beds, a vascular institute, skilled nursing facilities, visiting nurse associations, and 80 outpatient clinics and diagnostic and treatment centers. KH is located in Buffalo, New York.

Nature of Requirement: The regulation mandates that the three-year aggregate operating margin of the Hospital be greater than 0.00% when calculated from the three most recent annual financial statements.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 26, 2014.

Reason Waived: The Hospital does not meet the three-year operating margin rule. However, there are mitigating circumstances to reduce risk, including but not limited to a high debt service coverage, low loan-to-value, and considerable community financial support. Further, while the three-year aggregate operating margin is slightly less than 0.00% (−0.41%), recent financial results indicate that a positive margin will be achieved in the current fiscal year.

Contact: Shelley M. McCracken-Rania, Senior Financial Analyst, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2247, Washington, DC 20401, telephone (202) 402–5366.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Meadow Lane Apartments, New Rochelle, NY

Project Number: 012–EE382/NY36–S101–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 9, 2014.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Fulton Gardens Apartments, Houston, TX

Project Number: 114–EE150/TX24–S101–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 22, 2014.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Housing Opportunities II, Shirley, NY Project Number: 012–HD137/NY36–Q071–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 25, 2014.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Anderson Gardens Apartments, Woodstock, VA Project Number: 051–EE134/VA36–S091–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 5, 2014.

Reason Waived: Additional time was needed to approve a new co-sponsor and site. The sponsor/owner also needed additional

time for the new site to be rezoned and for the project to achieve initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pollywog Creek Senior Housing, Labelle, FL Project Number: 066–EE120/FL29–S101–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 8, 2014.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: ArtsBridge Senior Housing, Bronx, NY Project Number: 012–EE372/NY36–S091–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 14, 2014.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bill Sorro Community, San Francisco, CA Project Number: 121–HD097/CA39–Q101–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 19, 2014.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205,501(C)(3).

Project/Activity: Nativity B.V.M. Place, Philadelphia, PA Project Number: 034–EE167/PA26–S091–005.

Nature of Requirement: Section 891.205, requires at the time of the fund reservation for the Owner to be a private nonprofit organization with a tax exempt status under Section 501(C)(3) or 501(C)(4) of the Internal Revenue Code.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 29, 2014.

Reason Waived: The project experienced a delay of three years due to litigation and the required tax exemption ruling from Internal Revenue Service (IRS) was expected to be issued but not in time for the scheduled initial closing of the project. The waiver would permit the Owner of the subject project to proceed to initial closing without the required tax exemption ruling from the IRS.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* Requirements of Mortgagee Letter 2011–22, Condominium Project Approval and Processing Guide, Restrictions on Leasing

Project/Activity: Franklin Towers, Los Angeles, CA. Request to issue FHA case number for Unit #710 located at 7250 Franklin Avenue, Los Angeles, California without approving the subject condominium project as required per the regulatory requirement.

Nature of Requirement: Section 1.8.9 of the Condominium Project Approval and Processing Guide, Restrictions on Leasing, defines the requirements for use of a condominium unit for transient purposes as a rental for less than 30 days or where there are services provided by the lessor normally associated with a hotel. The Covenants, Conditions and Restrictions (CC&Rs) of the project contain impermissible transient usage language. The Association Board will not consider amending the CC&Rs removing the impermissible language or provide an executed statement that affirms there are no units within the project currently rented for less than 30 days and/or pursuant to the lessor providing any services normally associated with a hotel.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 4, 2014.

Reason Waived: The Unit purchaser should not lose the opportunity to purchase an affordable housing unit based on the Association Board's reluctant to provide the required statement for project approval. The granting of this waiver is consistent with the Department's objectives to expand the availability of FHA mortgage insurance, while providing appropriate safeguards.

Contact: Joanne B. Kuczma, Housing Program Officer, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9278, Washington, DC 20410, telephone (202) 402–2137.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Compton Housing Authority (CA071) Compton, CA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: September 8, 2014.

Reason Waived: The Housing Authority (HA) contended that the audit of the City of Compton was delayed as a result of allegations of fraud and misuse of the City funds resulting in the necessary forensic audit. As a result, the audited financial submission was delayed. In accordance with 24 CFR 5.110, there was good cause to waive the reporting compliance deadlines under 24 CFR 5.801. The additional time permitted the HA to finalize the audit process and complete the submission to the REAC. The HA's request for an extension until August 30, 2014 was approved.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: North Bend Housing Authority (OR009), North Bend, OR

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2014.

Reason Waived: The North Bend Housing Authority (HA) requested an extension of the due date because the HA's Auditor was not able to complete the audit due to health complications. The HA requested a 60-day extension in order to submit its FYE December 31, 2013 audited submission. The Department reviewed the HA's request and concluded that the waiver request approved.

In accordance with 24 CFR 5.110, there was good cause to approve the waiver of the audited financial submission due date of September 30, 2014. The inability to submit financial information to the Department by September 30, 2014 was beyond the control of the HA.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: The Housing Authority of the City of Alamogordo (NM004), Alamogordo NM

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2014.

Reason Waived: The Housing Authority of the City of Alamogordo contends that the audit was completed in March 2014. The auditors disagreed on the initial FASS system submission and this caused an additional delay in the REAC submission. As a result, the audited data was not submitted to the REAC on or before the due date of March 31, 2014. In accordance with 24 CFR 5.110, there was good cause to approve the HA's request and hereby waive the reporting compliance deadlines under 24 CFR 5.801. The audited data was completely submitted to the REAC on April 2, 2014 which was two (2) days after the due date. This audited data was used to calculate the new FASS indicator score for the Housing Authority of the City of Alamogordo.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: The Municipality of San Juan Puerto Rico (RQ006), San Juan PR

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: September 8, 2014.

Reason Waived: The Housing Authority (HA) new external auditor had concerns about the accuracy and validity of the prior year balances. Furthermore, new Government officials were appointed on January 14, 2013, which included a new management structure for the HA's finance department. This caused an issue with obtaining information to validate beginning balances of the previous issued audited financial data. The Department reviewed the Municipality of San Juan's request and concluded that the waiver request should be approved. In accordance with 24 CFR 5.110, there was good cause to approve the waiver of the audited financial submission due date of March 31, 2014. The Municipality of San Juan's inability to submit their financial information by March 31, 2014 was beyond the control of the HA.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 905.505(i)1.

Project/Activity: Mobile Alabama Housing Board.

Nature of Requirement: Establishes that a Public Housing Authority cannot pledge more than 33% of their annual Capital Fund grants for debt service.

Granted By: Jemine Byron, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: September 17, 2014.

Reason Waived: By allowing the Housing Authority to refinance their existing debt at a more than 33%, savings of about $1.8 million over the remaining life of the loan will be realized.

Contact: Ivan Pour, Director of the Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20410, telephone (202) 402–2488.

• *Regulation:* 24 CFR 982.401(c)(1) and (2).

Project/Activity: Idaho Housing and Finance Agency, (IHFA), Boise, ID.

Nature of Requirement: This regulation states that a unit approved under the Housing Choice Voucher program must have suitable space and equipment to store, prepare, and serve foods in a sanitary manner.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: August 22, 2014.

Reason Waived: This regulation was waived due to the fire danger presented to this participant while alternate arrangements were made to provide meals.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Berkeley Housing Authority (BHA), Berkeley, CA.

Nature of Requirement: 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: July 17, 2014.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to move to a more accessible unit. To provide this reasonable accommodation so the client could move to a new unit and pay no more than 40 percent of her adjusted income toward the family share, the BHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Georgia Department of Community Affairs (GDCA), Atlanta, GA.

Nature of Requirement: 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: August 7, 2014.

Reason Waived: The applicant, who is a person with disabilities, required an exception payment standard to remain in his current unit that met his needs. To provide this reasonable accommodation so that the client could remain in his unit and pay no more than 40 percent of his adjusted income toward the family share, the GDCA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA.

Nature of Requirement: 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: August 7, 2014.

Reason Waived: Five homeless veterans, who are persons with disabilities, required an exception payment standard to move to

units that met their needs. To provide this reasonable accommodation so that these clients could move to their units and pay no more than 40 percent of their adjusted income toward the family share, the SFHA was allowed to approve exception payment standards that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Baltimore County Housing Office (BCHO), Towson, MD.

Nature of Requirement: 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: August 22, 2014.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to remain in her unit. To provide this reasonable accommodation so the family could remain in its unit and pay no more than 40 percent of its adjusted income toward the family share, the BCHO was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Willimantic Housing Authority (WHA), Willimantic, CT.

Nature of Requirement: 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: August 22, 2014.

Reason Waived: The participant, whose daughter is a person with disabilities, required an exception payment standard to move to a unit that is wheelchair accessible. To provide this reasonable accommodation so that the client could move to a new unit and pay no more than 40 percent of her adjusted income toward the family share, the WHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Arvada Housing Authority (AHA), Arvada, CO.

Nature of Requirement: 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: August 29, 2014.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to move to a new unit. To provide this reasonable accommodation so the family could move to a new unit and pay no more than 40 percent of its adjusted income toward the family share, the AHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: South Metro Housing Options (SMHO), Littleton, CO.

Nature of Requirement: 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: August 29, 2014.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to move to a new unit. To provide this reasonable accommodation so the family could move to a new unit and pay no more than 40 percent of its adjusted income toward the family share, the SMHO was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Brookline Housing Authority (BHA), Brookline, MA.

Nature of Requirement: 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: September 18, 2014.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to move to a new unit. To provide this reasonable accommodation so the family could move to a new unit and pay no more than 40 percent of its adjusted income toward the family share, the BHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51 and 983.151.

Project/Activity: Housing Authority of Maricopa County (HAMC), Peoria, AZ.

Nature of Requirement: The first regulation details the procedures for selecting owner proposals; the second regulation addresses the requirements for rehabilitated and newly constructed units.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: August 7, 2014.

Reason Waived: These regulations were waived in order to facilitate the resolution and transfer of voucher units related to Apache Trails.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

[FR Doc. 2014–30070 Filed 12–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX14EF00CNTRC00]

Agency Information Collection Activities: Request for Comments on the Assessment of the Business Requirements and Benefits of Enhanced Geospatial Water Data

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, Assessment of the Business

Requirements and Benefits of Enhanced Geospatial Water Data.

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR.

DATES: To ensure that your comments on this ICR are considered, we must receive them on or before January 22, 2015.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028–NEW Assessment of the Business Requirements and Benefits of Enhanced Geospatial Water Data'. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028–NEW: Assessment of the Business Requirements and Benefits of Enhanced Geospatial Water Data' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Steve Aichele, National Geospatial Program U.S. Geological Survey, 215 Limekiln Rd., New Cumberland, PA 17070 (mail); 717–730–6949 (phone); or *saichele@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Geological Survey National Geospatial Program (NGP) is the Federal agency tasked by the Office of Management and Budget Circular A–16 with coordination of the hydrography (surface- water features) geospatial data theme. The purpose of this study is to ensure that the NGP's management of hydrography data theme is optimized to fully support the potential of geospatial data and information use in water science and mapping.

This one-time, voluntary information collection will engage professional users of hydrography information, including scientists, planners, and managers from Federal, state, and local government as well as academia and the private sector. The process will be guided by an interagency management team led by USGS with support from a professional services contractor. The information collection will include an online survey. Respondents may be contacted subsequently for clarification of responses. The information collection will focus on (1) respondent's current use of hydrography data, (2) desired improvements to hydrography data, and (3) benefits accrued to the respondent's mission if enhanced hydrography data were available. Personally Identifiable Information (PII) will not be sought. The results of the information collection will be used to evaluate potential future program changes for USGS hydrography data. A summary of the results will be published in a USGS publication. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and it's implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' All information will be stored according to established USGS security and information access protocols.

II. Data

OMB Control Number: 1028–NEW

Title: Assessment of the Business Requirements and Benefits of Enhanced Geospatial Water Data

Type of Request: Approval of new information collection.

Respondent Obligation: None (participation is voluntary).

Frequency of Collection: One time.

Description of Respondents: States, U.S. Territories, Tribes and selected private natural resource development companies.

Estimated Total Number of Annual Responses: 375 invited to survey, 300 expected respondents.

Estimated Time per Response: We estimate that it will take 5 minutes to read the invitation and 1 hour per person to complete the questionnaire.

Estimated Annual Burden Hours: 331.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On March 25, 2014, we published a **Federal Register** notice (79 FR 16368) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on May 27, 2014. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Julia L. Fields,

Deputy Director, National Geospatial Program.

[FR Doc. 2014–29912 Filed 12–22–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS01000.L13400000.DJ0000 241A MO# 4500074734]

Notice of Extension of the Public Comment Period for the Notice of Availability of the Las Vegas and Pahrump Field Offices Draft Resource Management Plan and Environmental Impact Statement, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) published a Notice of Availability for the Las Vegas and Pahrump Field Offices Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) in the **Federal Register** on October 10, 2014 [FR Doc. 2014–24135] and announced the availability of these documents for public comment until January 7, 2015. In response to multiple requests and because the comment period includes the holiday season, the BLM is extending the public comment period for the Draft RMP and Draft EIS until February 6, 2015.

DATES: The comment period is extended to February 6, 2015.

ADDRESSES: You may submit comments related to the Las Vegas and Pahrump Field Offices Draft RMP/Draft EIS by any of the following methods:

- *Web site: http://tinyurl.com/qzvaht7.*
- *Email: sndo_rmp_revision@blm.gov.*
- *Fax:* 702–515–5023.
- *Mail:* BLM Southern Nevada District Office, Las Vegas/Pahrump Field Offices Draft RMP/Draft EIS, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

Copies of the Las Vegas and Pahrump Field Offices Draft RMP/Draft EIS are available in the Southern Nevada District Office at the above address or on the following Web site *http://tinyurl.com/qzvaht7.*

FOR FURTHER INFORMATION CONTACT: Lee Kirk, RMP Team Lead, telephone: 702–515–5026; address: 4701 N. Torrey Pines Drive, Las Vegas, NV 89130; email: *sndo_rmp_revision@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Las Vegas and Pahrump Field Offices Draft RMP/Draft EIS would replace the existing 1998 Las Vegas Field Office RMP. The Draft RMP/Draft EIS was developed through a collaborative planning process. The Las Vegas and Pahrump Field Offices Draft RMP/Draft EIS decision area encompasses approximately 3.1 million acres of public land administered by the BLM Southern Nevada District in Clark and Southern Nye counties, Nevada. It does not include private lands, State lands, Indian reservations, Federal lands not administered by BLM or lands addressed in the Red Rock Canyon National Conservation Area RMP (2005) and Sloan Canyon National Conservation Area RMP (2006). The Las Vegas and Pahrump Field Offices Draft RMP/Draft EIS includes goals, objectives and management actions for protecting and preserving natural resources which includes air quality, soil and water resources, vegetation, fish and wildlife, special status species, wild horses and burros, wildland fire management, cultural and paleontological resources, visual resource values, and lands with wilderness characteristics. Multiple resource uses are addressed which include management and forage allocations for livestock grazing; delineation of lands open, closed, or subject to special stipulations or mitigation measures for minerals development; recreation and travel management designations; management of lands and realty actions, including delineation of avoidance and exclusion areas applicable to rights-of-ways, land tenure adjustments, and solar and wind energy development. The planning effort will consider establishment of a national trail management corridor for the congressionally-designated Old Spanish National Historic Trail. Eligible river segments will be evaluated for suitability as components of the National Wild and Scenic River System and 23 new Areas of Critical Environmental Concern (ACECs) are proposed. The ACECs are proposed to protect natural and cultural resource values and traditional Native American use areas.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Amy L. Lueders,

State Director, Nevada.

[FR Doc. 2014–29923 Filed 12–22–14; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000 L14300000.EU0000; WYW 167526]

Notice of Realty Action: Modified Competitive Sealed Bid Sale of Public Land in Sweetwater County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects the date that the Bureau of Land Management will open sealed bids for this public land sale. The original notice, which was published on Tuesday November 18, 2014, (79 FR 68693), incorrectly stated the date. On page 68693, column 3, line 9 under **DATES**, which reads ''January 20, 2015'', is hereby corrected to read ''January 21, 2015.''

Mary Jo Rugwell,

Acting Wyoming State Director.

[FR Doc. 2014–30059 Filed 12–22–14; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–EQD–SSB–17345; PX.XBSAD0104.00.1]

Proposed Information Collection: The National Parks and Federal Recreation Lands Pass Survey

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) concerning the National Parks and Federal Recreational Lands Passes—specifically focused on the online and telephone customers. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other federal agencies to take this opportunity to comment on this IC. A federal agency not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that your comments on this IC are considered, we must receive them on or before February 23, 2015.

ADDRESSES: Direct all written comments on this IC to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *pponds@nps.gov* (email). Please reference Information Collection 1024–NEW in the subject line.

FOR FURTHER INFORMATION CONTACT: Joshua Nadas, National Park Service. 1201 Eye Street NW., 9th Floor. Washington, DC 20005. *Joshua_Nadas@nps.gov* (email); or: 202.354.6909 (phone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Parks and Federal Recreational Lands Pass is an interagency pass series that is available for purchase by the public, and provides

pass holders with admission to National Parks and other Federal recreational lands where an entrance or standard amenity fee is charged. Three passes ($80 Annual Pass for general members of the public; $10 Senior Pass for U.S. citizens or permanent residents 62 or older; and a free Access Pass for U.S. citizens or permanent residents with a permanent disability) will be included in this study. This study will focus on passes purchased online and over the phone. The purpose of this collection is to learn how passes purchased online and by phone are used in the partnering land management agency.

II. Data

OMB Control Number: None. This is a new collection.

Title: The National Parks and Federal Recreation Lands Pass Survey.

Type of Request: New.

Affected Public: General public and individual households.

Respondent Obligation: Voluntary.

Frequency of Collection: One-time.

Estimated Number of Annual Responses: 1,055.

Annual Burden Hours: We estimate the total annual burden for this collection will be 352 hours (20 minutes per completed survey response).

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 17, 2014.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2014–30065 Filed 12–22–14; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF INTERIOR

National Park Service

[NPS–WASO–NRSS–EQD–SSB–17349; PPMCUVAI0, PXDCUVA0062.00.1]

Proposed Information Collection: The Use of Mobile Applications for Informal Learning in the Cuyahoga Valley National Park

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) concerning the use of mobile applications for visitor informal science learning in the Cuyahoga Valley National Park. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other federal agencies to take this opportunity to comment on this IC.

DATES: To ensure that your comments on this IC are considered, we must receive them on or before February 23, 2015.

ADDRESSES: Direct all written comments on this IC to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection 1024–CUVA in the subject line.

FOR FURTHER INFORMATION CONTACT: Rick Ferdig, Ph.D., Research Center for Educational Technology, School of Lifespan Development and Educational Sciences, Kent State University, Kent, OH 44242; *rferdig@kent.com* (email) or 330–672–3371 (phone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Researchers from Cuyahoga Valley National Park (CUVA) and Kent State University would like to understand how visitors would use and interact with a mobile application (app) created specifically for science learning in the parks. We will use a pre and post knowledge survey to evaluate a developmental mobile app designed for visitor use while on-site in the park. The surveys will help us to understand the quality of science learning acquired by visitors using mobile applications. We will also administer a post trip survey to measure visitor satisfaction concerning the overall usability of the mobile app. The results from this collection will be used to provide feedback and updates regarding the further development of an app created specifically for science learning in the national parks.

II. Data

OMB Number: None. This is a new collection.

Title: The Use of Mobile Applications for Informal Learning in the Cuyahoga Valley National Park.

Type of Request: New.

Affected Public: General public who visit the Cuyahoga Valley National Park.

Respondent Obligation: Voluntary.

Frequency of Collection: Multiple times dependent on respondent.

Estimated Number of Annual Responses: 2,000.

Annual Burden Hours: 500 hours. We estimate the public reporting burden to be 2000 users × 15 minutes to complete the questionnaire.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 17, 2014.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2014–30063 Filed 12–22–14; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of an Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Office on Violence Against Women, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 79, Number 202, page 62673, on October 20, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until January 22, 2015.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Attorney Advisor, Office on Violence Against Women, 145 N Street NE., Washington, DC 20530 (phone: 202–514–5430).

Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance Program

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0013. U.S. Department of Justice, Office on Violence Against Women

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 165 grantees of the Rural Program. The primary purpose of the Rural Program is to enhance the safety of victims of domestic violence, dating violence, sexual assault, stalking, and child victimization by supporting projects uniquely designed to address and prevent these crimes in rural jurisdictions. Grantees include States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 165 respondents (Rural Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Rural Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 330 hours, that is 165 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: December 18, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–29997 Filed 12–22–14; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0016]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of an Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office on Violence Against Women, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 79, Number 202, page 62674, on October 20, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until January 22, 2015.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Attorney Advisor, Office on Violence Against Women, 145 N Street NE., Washington, DC 20530 (phone: 202–514–5430).

Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk

Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees of the Transitional Housing Assistance Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0016. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 120 grantees of the Transitional Housing Assistance Grant Program (Transitional Housing Program) whose eligibility is determined by statute. This discretionary grant program provides transitional housing, short-term housing assistance, and related support services for individuals who are homeless, or in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence, dating violence, sexual assault, or stalking, and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient. Eligible applicants are States, units of local government, Indian tribal governments, and other organizations, including domestic violence and sexual assault victim services providers, domestic violence or sexual assault coalitions, other nonprofit, nongovernmental organizations, or community-based and culturally specific organizations, that have a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 120 respondents (grantees) approximately one hour to complete the Semi-Annual Progress Report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. A Transitional Housing Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 240 hours, that is 120 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: December 18, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–29998 Filed 12–22–14; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0007]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of an Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Office on Violence Against Women, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 79, Number 202, page 62671, on October 20, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until January 22, 2015.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Attorney Advisor, Office on Violence Against Women, 145 N Street NE., Washington, DC 20530 (phone: 202–514–5430).

Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees of the Legal Assistance for Victims Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0007. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 200 grantees of the Legal Assistance for Victims Grant Program (LAV Program) whose eligibility is determined by statute. In 1998, Congress appropriated funding to provide civil legal assistance to domestic violence victims through a set-aside under the Grants to Combat Violence Against Women, Public Law 105–277. In the Violence Against Women Act of 2000 and again in 2005, Congress statutorily authorized the LAV Program. 42 U.S.C. 3796gg–6. The LAV Program is intended to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence. The LAV Program awards grants to law school legal clinics, legal aid or legal services programs, domestic violence victims' shelters, bar associations, sexual assault programs, private nonprofit entities, and Indian tribal governments. These grants are for providing direct legal services to victims of domestic violence, sexual assault, and stalking in matters arising from the abuse or violence and for providing enhanced training for lawyers representing these victims. The goal of the Program is to develop innovative, collaborative projects that provide quality representation to victims' of domestic violence, sexual assault, and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 200 respondents (LAV Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. An LAV Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: December 18, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–29996 Filed 12–22–14; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office on Violence Against Women, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 79, Number 202, page 62672, on October 20, 2014, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until January 22, 2015.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Attorney Advisor, Office on Violence Against Women, 145 N Street NE., Washington, DC 20530 (phone: 202–514–5430). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Survey of Victim Services Organizations Receiving Funds under Grant Programs Authorized under the Violence Against Women Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122—*NEW*. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes approximately 800 victim services organizations currently or previously funded through grant programs authorized under the Violence Against Women Act (VAWA) and administered by the Office on Violence Against Women. Organization that provide victim services are increasingly using trauma informed services and interventions. OVW seeks to understand which grantees are engaged in the provision of trauma informed services and interventions, how trauma informed services and interventions are being implemented, and identify best practices. In order to better support current and future grantees who provide comprehensive, holistic services to victims of domestic violence, dating violence, sexual assault and stalking,

OVW will gather information through an electronic online survey tool about trauma informed services. This information will assist OVW in the implementation of grant programs that are authorized to support victim services and will also benefit other communities that want to consider using funds to support similar services.

In addition, OVW will be able to provide more effective training and technical to grantees on implementing trauma informed services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 800 respondents (victim service organizations currently or previously funded through grant programs authorized by VAWA and administered by OVW) approximately 30 minutes to complete the survey. The survey will include 10 questions about the respondents' understanding of trauma informed services and interventions, how trauma informed services and interventions are being implemented, successes and challenges of utilizing trauma informed services and interventions, and a survey of best practices. The survey will include a combination of multiple choice questions and questions involving a rating scale as well one or two narrative questions.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is approximately 800 respondents with an estimated completion time for the form being 30 minutes.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 18, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–29999 Filed 12–22–14; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period on Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On November 17, 2014 the Department of Justice published a notice of the lodging of a proposed Consent Decree in the United States District Court for the District of Oregon in the lawsuit entitled *United States* v. *Linnton Plywood Association,* Civil Action No. 3:14–1772. *See* 79 FR 68484. That notice commenced a thirty (30) day public comment period. By this notice, the United States hereby extends the public comment period by an additional thirty (30) days.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Linnton Plywood Association,* D.J. Ref. No. 90–11–2–06787/3 All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $8.75.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–29926 Filed 12–22–14; 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—Consortium for Homeland Security Technology

Notice is hereby given that, on December 1, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Homeland Security Technology (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Consortium for Homeland Security Technology, Washington, DC; Chesapeake Cartridge Corporation, Blacksburg, VA; D&S Consultants, Inc., Eatontown, NJ; Interoptek, Inc., Huntsville, AL; Louisiana Tech University, Ruston, LA; OGSystems, LLC, Chantilly, VA; Protonex Technology Corporation, Southborough, MA; R3 Strategic Support Group, Inc., Coronado, CA; REK Associates, LLC, South Riding, VA; RMCU, LLC, Franklin, NC; Shoulder 2 Shoulder, Inc., Bluemont, VA; STIMULUS Engineering Services, Inc., Odon, IN; Tiburon Associates, Inc., Grand Rapids, MI; and UXB International, Blacksburg, VA.

The general area of Consortium's planned activity is to (a) enter into an Other Transaction Agreement (''OT Agreement'') with the U.S. Government (''Government'') for the funding of certain research, development, testing and evaluation of prototypes to be conducted as a collaboration between the Government and Consortium Members, to enhance the capabilities of the Government and its departments and agencies in the fields of border and maritime security; chemical and biological defense; cyber security; explosives countermeasures; first response; and resilient systems; (b) participate in the establishment of sound technical and programmatic performance goals based on the needs and requirements of the Government's Technology Objectives and create programs and secure funding for the Technology Objectives; (c) provide a

unified voice to effectively articulate the global and strategically important role homeland security-enabling technologies play in current and future national security objectives; and (d) maximize the utilization of the Government's and Members' capabilities to effectively develop critical technologies which can be transitioned and commercialized.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–30042 Filed 12–22–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Allseen Alliance, Inc.

Notice is hereby given that, on November 24, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AllSeen Alliance, Inc. (''AllSeen Alliance'') 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, Sony Corporation, Tokyo, JAPAN; Microfactory, Inc., Louisville, KY; Innopia Technologies, Inc., Seongnam, Gyeonggi, REPUBLIC OF KOREA; Smartlabs, Inc., Irvine, CA; Devon alli, Atlanta, GA; M2Communicaton, Inc., Taiwan, PEOPLE'S REPUBLIC OF CHINA; ADT Security Services, Boca Raton, FL; MobilityLab LLC, Moscow, RUSSIA; Organic Response Pty Ltd., Richmond, Victoria, AUSTRALIA; Quanta Computer Inc., Kuei Shan, Tao Yuan, TAIWAN; NETGEAR, Inc., San Jose, CA; Things.Expert LLC, Doral, FL; dog hunter LLC, Boston, MA; Shenzhen Fenglian Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Verisign, Inc., Reston, VA; ForgeRock Inc., San Francisco, CA; Lenovo (Bejing), Beijing, PEOPLE'S REPUBLIC OF CHINA; Resin, Inc., San Francisco, CA; and Inteno Broadband Technology AB, Hagersten, SWEDEN, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AllSeen Alliance intends to file additional written notifications disclosing all changes in membership.

On January 29, 2014, AllSeen Alliance 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 March 4, 2014 (79 FR 12223).

The last notification was filed with the Department on September 2, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 30, 2014 (79 FR 58805).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–30040 Filed 12–22–14; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–020]

Charter Renewal; State, Local, Tribal, and Private Sector Policy Advisory Committee

AGENCY: National Archives and Records Administration.

ACTION: Notice of Charter Renewal, State, Local, Tribal, and Private Sector Policy Advisory Committee.

SUMMARY: The National Archives and Records Administration (NARA) announces renewal of the State, Local, Tribal, and Private Sector (SLTPS) Policy Advisory Committee, in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.). The General Services Administration approved inclusion of the SLTPS Policy Advisory Committee in NARA's ceiling of federal advisory committees, under Executive Order 13549 and Executive Order 13652.

FOR FURTHER INFORMATION CONTACT: Patrice Little Murray, NARA's Committee Management Officer (CMO), by telephone at 301–837–2001.

SUPPLEMENTARY INFORMATION: NARA has determined that renewing the SLTPS Policy Advisory Committee is in the public interest due to the expertise and valuable advice the committee members provide on matters related to the Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities.

Dated: December 16, 2014.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2014–30039 Filed 12–22–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services (OGIS)

[NARA–2015–017]

Freedom of Information Act (FOIA) Advisory Committee; Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of FOIA Advisory Committee Meeting,

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App) and the second United States Open Government National Action Plan (NAP) released on December 5, 2013, NARA announces an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting.

DATES: The meeting will be on January 27, 2015, from 10:00 a.m. to 1:00 p.m. EST. Registration for the meeting must be completed on or before 5:00 p.m. EST January 26, 2015.

ADDRESSES: National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW; Archivist's Reception Room (Room 105); Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Christa Lemelin, Designated Federal Officer for this committee, by mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road—OGIS; College Park, MD 20740–6001, by telephone at 202–741–5773, or by email at *Christa.Lemelin@nara.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the FOIA issues on which the Committee is focusing its efforts: oversight and accountability, proactive disclosures, and fees. This meeting will be open to the public. However, due to space limitations and access procedures, NARA requests that individuals planning to attend register for the event via Eventbrite at *http://www.eventbrite.com/e/freedom-of-information-act-foia-advisory-committee-meeting-registration-14028440443.* Eventbrite registration for the meeting will go live on Tuesday, January 6, 2015, at 10:00 a.m. EST. Members of the media who wish to register, those who are unable to register

via Eventbrite, and those who require special accommodations, should contact Christa Lemelin at the contact information listed above. The FOIA Advisory Committee Web page at *https://ogis.archives.gov/foia-advisory-committee/meetings.htm* contains an agenda and additional instructions for participation.

Dated: December 17, 2014,

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2014–30029 Filed 12–22–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–019]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, in accordance with 44 U.S.C. 3303a(a).

DATES: NARA must receive written requests for copies of the records schedules listed in this notice on or before January 22, 2015. Once NARA has completed appraisal of the records, we will send you a copy of the schedule. NARA staff usually prepare appraisal memoranda that contain additional information concerning the records listed in a proposed schedule. You may also ask for copies of these in your request. You will have 30 days after NARA sends you a records schedule to submit comments on it.

ADDRESSES: You may request a copy of any records schedule listed in this notice by contacting Records Management Services (ACNR) by mail at NARA (ACNR); 8601 Adelphi Road; College Park, MD 20740–6001, by email at *request.schedule@nara.gov,* or by fax at 301–837–3698. You must cite the control number, which appears below in parentheses after the name of the agency which submitted the schedule, and you must provide a mailing address. If you would like appraisal reports as well, please state that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services, by mail at National Archives and Records Administration (ANCR); 8601 Adelphi Road; College Park, MD 20740–6001, by telephone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved, these schedules give the agency appropriate times by which to transfer historically valuable records into the National Archives and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media-neutral unless otherwise specified. Media-neutral means that the agency may apply the disposition instructions to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media-neutral unless the item is specifically limited to a certain medium (see 36 CFR 1225.12(e)).

No Federal records may be destroyed without authorization granted by the Archivist of the United States through an approved records schedule. The Archivist grants destruction authority only after a thorough consideration of the agency of origin's administrative use of the records, the rights of the Government and of people directly affected by the Government's activities, and the records' historical or other value.

This notice identifies the Federal agencies and any subdivisions requesting disposition authority and the organizational unit(s) accumulating the records—or agency-wide applicability in the case of records that may be accumulated throughout an agency. This notice also lists the control number assigned to each schedule, the total number of schedule items, the number of temporary items (records proposed for destruction), and a brief description of the temporary records.

The records schedules themselves contain a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for a schedule, it, too, includes information about the covered records. You may request additional information about the disposition process from the contact listed above.

Schedules Pending

1. Department of the Army, Agency-wide (DAA–AU–2014–0033, 1 item, 1 temporary item). Master files of an electronic information system that contains information used to create personnel-type orders.

2. Department of the Army, Agency-wide (DAA–AU–2015–0004, 1 item, 1 temporary item). Master files of an electronic information system that contains financial, acquisition, and personnel data used to make equipment life cycle management decisions.

3. Department of the Army, Agency-wide (DAA–AU–2015–0005, 1 item, 1 temporary item). Master files of an electronic information system that contains equipment maintenance data including equipment name, serial and stock numbers, and location.

4. Department of the Army, Agency-wide (DAA–AU–2015–0006, 1 item, 1 temporary item). Master files of an electronic information system that contains facilities and equipment maintenance data including work orders, repair tickets, and labor reports.

5. Department of Commerce, National Telecommunications and Information Administration (DAA–0417–2014–0001, 1 item, 1 temporary item). Spectrum frequency assignment cards, including frequency number, transmitter location, and application and authorization dates.

6. Department of Defense, Office of the Secretary of Defense (DAA–0220–2013–0001, 5 items, 2 temporary items). Records related to Department of Defense commemorative programs including administrative files and Web site administrative files. Proposed for permanent retention are program files,

including reports, meeting minutes, newsletters, and related records; program Web site content files of unique electronic documents; and photographs, videos, and films.

7. Department of Defense, Defense Finance and Accounting Service (DAA–0507–2015–0001, 1 item, 1 temporary item). Reports and other records of situations, incidents, and natural disasters.

8. Department of Defense, Defense Logistics Agency (DAA–0361–2015–0003, 5 items, 5 temporary items). Records relating to the Family, Morale, Welfare, and Recreation Program including marketing, advertisement, and sponsorship files.

9. Department of Energy, Agency-wide (DAA–0434–2015–0002, 1 item, 1 temporary item). Master files of an electronic information system used to track routine personnel actions.

10. Department of Energy, Agency-wide (DAA–0434–2015–0003, 2 items, 2 temporary items). Master files of an electronic information system used to track and manage internal learning and development programs.

11. Department of Health and Human Services, Agency-wide (DAA–0512–2014–0006, 4 items, 3 temporary items). Records of the National Practitioner Data Bank, including query transactions, compliance and research files, and dispute resolution case files. Proposed for permanent retention are reports providing a comprehensive history of actions taken against health care practitioners, suppliers, and providers.

12. Department of Health and Human Services, Medicaid and CHIP Payment and Access Commission (N1–148–15–1, 11 items, 5 temporary items). Administrative records documenting policy analysis and health services research related to Medicaid and the Children's Health Insurance Program. Records include general program correspondence and working papers, drafts of publications, records related to public meetings, and web content. Records proposed for permanent retention include reports to Congress, congressional testimony, letters commenting on proposed regulations, documentation of public meetings, official publications, and executive correspondence of the chair, vice chair, executive director, and deputy director.

13. Department of Health and Human Services, National Institutes of Health (DAA–0443–2013–0004, 4 items, 4 temporary items). Records that document the extramural research program, including grant applications, grant files, grant final products, progress reports, status reports, site visit reports, monitoring records, training records, and animal welfare assurance files.

14. Department of Homeland Security, Agency-wide (DAA–0563–2013–0003, 8 items, 7 temporary items). Social media records of the Department and its component agencies including updates, tips, public service campaigns, and copies of speech or testimony records. Proposed for permanent retention are records of original content posted by an authorized Department representative.

15. Department of Homeland Security, U.S. Citizenship and Immigration Services (DAA–0566–2014–0005, 2 items, 2 temporary items). Documents, booklets, cards, and forms granting immigration benefits that were flawed, undeliverable, not claimed, returned to the agency, or expired, including naturalization and citizenship certificates, legal permanent resident cards, re-entry permits, and employment authorization documents.

16. Department of the Interior, Bureau of Ocean Energy Management (N1–589–12–4, 46 items, 40 temporary items). Records include energy and mineral leasing adjudication and administration records. Proposed for permanent retention are lease maps, strategic five-year program plans, environmental studies, and renewable energy program records.

17. Department of Justice, Office of Tribal Justice (DAA–0060–2014–0006, 1 item, 1 temporary item). Routine informational correspondence from tribal governments.

18. Department of the Navy, Judge Advocate General (DAA–0428–2014–0001, 2 items, 2 temporary items). Master files of an electronic information system that contains personnel assignment information.

19. Department of the Navy, U.S. Marine Corps (DAA–0127–2014–0022, 1 item, 1 temporary item). Master files of an electronic information system that contains contact information on individuals who may have been exposed to contaminated drinking water at Marine Corps Base Camp Lejeune.

20. Environmental Protection Agency, Agency-wide (DAA–0412–2013–0015, 5 items, 4 temporary items). Controls and oversight records, including audits of laboratories, animal welfare assurance records, Inspector General audits and investigations (except for significant case files), and program activity evaluation reports. Proposed for permanent retention are Inspector General semiannual reports to Congress, significant Inspector General investigative case files, and Audit Resolution Board case files.

21. Environmental Protection Agency, Agency-wide (DAA–0412–2013–0016, 3 items, 2 temporary items). Legal services records, including records related to legal representation of the agency in challenges to regulations, disputes over contracts and grants, bid protest cases, tort claims, alternative dispute resolution cases, and other legal matters. Proposed for permanent retention are legal opinions related to environmental law and regulations.

22. Library of Congress, Agency-wide (DAA–0297–2014–0017, 27 items, 25 temporary items). Records of the Copyright Office and Copyright Royalty Board, including records relating to copyright registration, ownership and designation of agent, copyright deposit and mandatory deposit, royalty payments and non-royalty arrangements, and Copyright Royalty Board proceedings. Proposed for permanent retention are promulgated copyright legislation and final versions of copyright legal opinions, policy statements, and rulemaking records not published in the **Federal Register**.

23. National Aeronautics and Space Administration, Agency-wide (DAA–0255–2014–0002, 2 items, 2 temporary items). Records of the Chief Information Officer, including system compliance records and system administrative management records.

24. National Aeronautics and Space Administration, Agency-wide (DAA–0255–2014–0003, 2 items, 1 temporary item). Legal opinions and advice records created by the Office of the General Counsel and Center Office of the Chief Counsel. Proposed for permanent retention are legal opinions and advice records that set precedents or have a major impact on operations or policies.

25. National Archives and Records Administration, Research Services (N2–234–13–1, 1 item, 1 temporary item). Records of the Metal Reserves Corporation and the Rubber Reserve Company of the Reconstruction Finance Corporation including ledgers and contracts relating to production and shipping activities. These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

26. Peace Corps, Overseas Posts (N1–490–12–2, 7 items, 3 temporary items). Records include routine recruiting materials and project plans. Proposed for permanent retention are high level governance and operational documents of overseas posts.

Dated: December 15, 2014.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2014–30030 Filed 12–22–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Executive Committee, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Tuesday, January 6, 2015 from 2:00 to 4:00 p.m. EST.

SUBJECT MATTER: (1) Chairman's opening remarks; and (2) Discussion of agenda for the February 2015 meeting.

STATUS: Open.

This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening line will be available. Members of the public must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public listening number.

Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: James Hamos, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2014–30179 Filed 12–19–14; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255–LA; ASLBP No. 15–936–03–LA–BD01]

Entergy Nuclear Operations, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding: Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant).

This proceeding involves an application by Entergy Nuclear Operations, Inc. (Entergy) for a license amendment for Palisades Nuclear Plant, located in Van Buren County, Michigan. In response to a notice filed in the **Federal Register**, *see* 79 FR 58,812 (Sept. 30, 2014), a Petition to Intervene was filed on December 1, 2014 by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future—Shoreline Chapter, and the Nuclear Energy Information Service.

The Board is comprised of the following administrative judges:

Ronald M. Spritzer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Thomas J. Hirons, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.
Dated: December 17, 2014.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2014–30060 Filed 12–22–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0271]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 27, 2014 to December 10, 2014. The last biweekly notice was published on December 9, 2014.

DATES: Comments must be filed by January 22, 2015. A request for a hearing must be filed by February 23, 2015.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0271. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0271 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0271.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS,

please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0271 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide

when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include

copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit 2, New London County, Connecticut

Date of amendment request: June 30, 2014. A publicly-available version is in ADAMS under Accession No. ML14188B189.

Description of amendment request: The amendment would revise Technical Specifications (TSs) requirements to adopt the changes described in the NRC's approved Technical Specifications Task Force (TSTF) Standard Technical Specifications Change Traveler TSTF–426, Revision 5, ''Revise or Add Actions to Preclude Entry into LCO 3.0.3–TSTF Initiatives 6b and 6c.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change provides a short Allowed Outage Time to restore an inoperable system for conditions under which the existing Technical Specifications require a plant shutdown to begin within one hour in accordance with LCO 3.0.3. Entering into Technical Specification Actions is not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not significantly increased. The consequences of any previously evaluated accident that may occur during the proposed Allowed Outage Times are no different than the consequences of the same accident during the existing one hour allowance. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from the proposed change. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The proposed changes do not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change increases the allowed outage time MPS2 may continue to operate without the operability of any one of the five identified systems proposed in this change for up to 24 hours. The analyses in WCAP–16125–NP–A, ''Justification for Risk-Informed Modifications to Selected Technical Specifications for Conditions Leading to Exigent Plant Shutdown,'' Revision 2, August 2010, demonstrated that this limited increase in AOT results in an acceptably small increase in risk due to a limited period of continued operation in these conditions and that the associated risk is balanced by avoiding the similar risks associated with a plant shutdown. As a result, the change to the margin of safety proposed by modifying a plant shutdown within one hour is not significant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Benjamin G. Beasley.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit 3, New London County, Connecticut

Date of amendment request: May 8, 2014, as supplemented by letters dated August 14, October 15, and October 16, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML14133A009, ML14234A097, ML14294A452, and ML14294A451.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation'' and TS 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' to adopt Completion Time (CT) and test bypass time changes. These changes have been approved by the NRC in Topical Reports WCAP–14333–P–A, ''Probabilistic Risk Analysis of the RPS and ESFAS Test Times and Completion Times,'' Revision 1, dated October 1998, and WCAP–1 5376–P–A, ''Risk-informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times,'' Revision 1, dated March 2003.

As discussed in the supplement dated August 14, 2014, the licensee subsequently deleted certain changes requested in the May 8, 2014 application. Those changes were deleted because they were found by the NRC staff to be unsupported by the scope of the provisions approved by WCAP–14333–P–A, Revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The same RTS [Reactor Trip System] and ESFAS [Engineered Safety Feature Actuation System] instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. These changes to the TS do not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered.

The proposed changes will not modify any system interface. The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the Final Safety Analysis Report (FSAR).

The determination that the results of the proposed changes are acceptable was established in the NRC Safety Evaluations prepared for WCAP–14333–P–A, (issued by letter dated July 15, 1998) and for WCAP–1 5376–P–A, (issued by letter dated December 20, 2002). Implementation of the proposed changes will result in an insignificant risk impact. Applicability of these conclusions has been verified through plant-specific reviews and implementation of the generic analysis results in accordance with the respective NRC Safety Evaluation conditions.

The proposed changes to the CTs, and test bypass times reduce the potential for inadvertent reactor trips and spurious engineered safeguard features actuations, and therefore do not increase the probability of any accident previously evaluated. The proposed changes do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the RTS and ESFAS signals. The RTS and ESFAS will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety, as measured by the increase in core damage frequency (CDF) is less than 1.OE–06 per year and the increase in large early release frequency (LERF) is less than 1.OE–07 per year. In addition, for the CT changes, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5.OE–07 and 5.OE–08, respectively. These changes meet the acceptance criteria in Regulatory Guides (RGs) 1.174 and 1.177.

Therefore, since the RTS and ESFAS will continue to perform their functions with high reliability, as originally assumed, and the increase in risk, as measured by CDF, LERF, ICCDP, ICLERP risk metrics, is within the acceptance criteria of existing regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, this change does not significantly increase the probability or consequences of any accident previously evaluated.

2. Do proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The proposed changes will not affect the normal method of plant operation. No performance requirements will be affected or eliminated. The proposed changes will not result in physical alteration to any plant system nor there any change in the method by which any safety-related plant system performs its safety function. There will be no setpoint changes or changes to accident analysis assumptions.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit. There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the departure from nucleate boiling limits, fuel centerline temperature, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' will continue to be met.

Redundant RTS and ESFAS trains are maintained, and diversity with regard of the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in RGs 1.174 and 1.177.

Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

- Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and shift supervisor to attend to instrumentation Required Actions with short CTs.
- Longer repair times associated with increased CTs will lead to higher quality repairs and improved reliability.
- The CT extensions for the reactor trip breakers will provide additional time to complete test and maintenance activities while at power, potentially reducing the number of forced outages related to compliance with reactor trip breaker CT, and provide consistency with the CT for the logic trains.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Benjamin G. Beasley.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: October 21, 2014. A publicly-available version is in ADAMS under Accession No. ML14295A078.

Description of amendment request: The proposed amendment would replace the current emergency action level scheme with the scheme described in Nuclear Energy Institute (NEI) 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors'' (ADAMS Accession No. ML110240324).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes to DTE's EAL [emergency action level] scheme to adopt the NRC-endorsed guidance in NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' do not reduce the capability to meet the emergency planning requirements established in 10 CFR 50.47 and 10 CFR 50, Appendix E. The proposed changes do not reduce the functionality, performance, or capability of DTE's ERO [Emergency Response Organization] to respond in mitigating the consequences of any design basis accident.

The proposed changes do not alter the requirements of the Operating License or the Technical Specifications. The proposed changes do not modify any plant equipment and do not impact any failure modes that could lead to an accident. The proposed changes do not impact the consequence of an analyzed accident since the changes do not affect equipment related to accident mitigation. The proposed changes do not involve any physical changes to plant equipment or systems, nor do they alter the assumptions of any accident analyses. The

proposed changes do not adversely affect accident initiators or precursors nor do they alter the design assumptions, conditions, and configuration or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of Structures, Systems, or Components (SSCs) to perform their intended safety functions in mitigating the consequences of an initiating event.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed EAL changes to adopt the NRC-endorsed guidance in NEI 99–01, Revision 6, do not involve any physical changes to plant systems or equipment. The proposed changes do not involve the addition of any new plant equipment. The proposed changes will not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. All DTE ERO functions will continue to be performed as required. The proposed changes do not create any new credible failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from those that have been previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The proposed EAL changes to adopt the NRC-endorsed guidance in NEI 99–01, Revision 6, do not alter or exceed a design basis or safety limit. There is no change being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes. There are no changes to setpoints or environmental conditions of any SSC or the manner in which any SSC is operated. Margins of safety are unaffected by the proposed changes to adopt the NEI 99–01, Revision 6 EAL scheme guidance. The applicable requirements of 10 CFR 50.47 and 10 CFR 50, Appendix E will continue to be met.

Therefore, the proposed changes do not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bruce R. Maters, DTE Energy, General Counsel—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: David L. Pelton.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: November 3, 2014. A publicly-available version is in ADAMS under Accession No. ML14308A144.

Description of amendment request: The proposed amendment would add new Limiting Conditions for Operation (LCOs) 3.0.5 and 3.0.6 to the Applicability section of the Technical Specifications (TSs). The LCO 3.0.5 would establish an allowance for restoring equipment to service, under administrative controls, when the equipment has been removed from service or declared inoperable to comply with TS Action requirements. The LCO 3.0.6 would provide actions to be taken when the inoperability of a support system results in the inoperability of the related supported systems. In addition, the proposed amendment would add the Safety Function Determination Program to the Administrative Controls section of the TSs. This program is intended to ensure that a loss of safety function is detected and appropriate actions are taken when LCO 3.0.6 is entered.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes involve the addition of a new Limiting Condition for Operation (LCO) 3.0.5 to the Applicability Section of the Limerick Generating Station (LGS) Technical Specifications (TS) which allows restoration of equipment to service under administrative controls when it has been removed from service or declared inoperable to comply with TS Action requirements. The potential impact of temporarily returning the equipment to service is considered to be insignificant since the equipment has been restored to a condition which is expected to provide the required safety function.

Returning the equipment to service for operability testing will promote timely restoration of the equipment and reduce the probability of events that may have been prevented or mitigated by such operable equipment. Since the equipment to be restored is already out of service, the availability of the equipment has been previously considered in the evaluation of consequences of an accident. Temporarily returning the equipment to service in a state which is expected to function as required to mitigate the consequences of a previously analyzed accident will promote timely restoration of the equipment and restore the capabilities of the equipment to mitigate the consequences of any events previously analyzed.

Additionally, the proposed changes involve the addition of a new LCO 3.0.6 to the Applicability Section of the LGS TS that provides appropriate actions to be taken when the inoperability of a support system results in the inoperability of related supported systems. Furthermore, the proposed changes involve adding new Safety Function Determination Program (SFDP) requirements to the Administrative Section of the LGS TS to ensure that a loss of safety function is detected and appropriate actions are taken when LCO 3.0.6 is entered.

The proposed changes do not alter the physical design of any plant structure, system, or component; therefore, the proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents does not change.

Also, the proposed changes conform to NRC regulatory requirements regarding the content of plant TS as identified in 10 CFR 50.36, and also the guidance as approved by the NRC in NUREG–1433, ''Standard Technical Specifications-General Electric BWR [boiling-water reactor]/4 Plants.''

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes include the addition of a new LCO 3.0.5 to the Applicability Section of the LGS TS which allows restoration of equipment to service under administrative controls when it has been removed from service or declared inoperable to comply with TS Action requirements. Operation with the inoperable equipment temporarily restored to service is not considered a new mode of operation since existing procedures and administrative controls prevent the restoration of equipment to service until it is considered capable of providing the required safety function.

Performance of the operability testing is considered to be a confirmatory check of that capability which demonstrates that the equipment is indeed operable. For those times when equipment which may be temporarily returned to service under administrative controls is subsequently determined to be inoperable, the resulting condition is comparable to the equipment having been determined to be inoperable during operation, with continued operation for a specified time allowed to complete required TS Actions. Since this condition has been previously evaluated in the development of the current TS, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

The proposed changes also involve the addition of a new LCO 3.0.6 to the

Applicability Section of the LGS TS that provides appropriate actions to be taken when the inoperability of a support system results in the inoperability of related supported systems. Likewise, the proposed changes involve the addition of new Safety Function Determination Program (SFDP) requirements to the Administrative Section of the LGS TS to ensure that a loss of safety function is detected and appropriate actions are taken when LCO 3.0.6 is entered.

The proposed changes do not alter the plant configuration (no new or different type of equipment is being installed) or require any new or unusual operator actions. The proposed changes do not alter the safety limits or safety analysis assumptions associated with the operation of the plant. The proposed changes do not introduce any new failure modes that could result in a new accident. The proposed changes do not reduce or adversely affect the capabilities of any plant structure, system, or component in the performance of their safety function. Also, the response of the plant and the operators following the design basis accidents is unaffected by the proposed changes.

In addition, the proposed changes conform to NRC regulatory requirements regarding the content of plant TS as identified in 10 CFR 50.36, and also the guidance as approved by the NRC in NUREG–1433, ''Standard Technical Specifications-General Electric BWR/4 Plants.''

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes involve the addition of a new LCO 3.0.5 to the Applicability Section of the LGS TS which allows restoration of equipment to service under administrative controls when it has been removed from service or declared inoperable to comply with TS Action requirements.

Temporarily returning inoperable equipment to service for the purpose of confirming operability, places the plant in a condition which has been previously evaluated and determined to be acceptable for short periods. Additionally, the equipment has been determined to be in a condition which provides the previously determined margin of safety. The performance of the operability testing simply confirms the expected result and capability of the equipment.

Additionally, the proposed changes involve the addition of a new LCO 3.0.6 to the Applicability Section of the LGS TS that provides appropriate actions to be taken when the inoperability of a support system results in the inoperability of related supported systems. The proposed changes also involve adding new Safety Function Determination Program (SFDP) requirements to the Administrative Section of the LGS TS to ensure that a loss of safety function is detected and appropriate actions are taken when LCO 3.0.6 is entered.

The proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents does not change. The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes.

In addition, the proposed changes conform to NRC regulatory requirements regarding the content of plant TS as identified in 10 CFR 50.36, and also the guidance as approved by the NRC in NUREG–1433, ''Standard Technical Specifications-General Electric BWR/4 Plants.''

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Vice President and Deputy General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Meena K. Khanna.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station (CNS), Nemaha County, Nebraska

Date of amendment request: August 26, 2014. A publicly-available version is in ADAMS under Accession No. ML14246A203.

Description of amendment request: The proposed amendment would revise the CNS Technical Specifications (TS) and TS Bases by deleting Option b from TS Surveillance Requirement (SR) 3.5.2.1 and its associated Bases. Option b allows use of Condensate Storage Tank (CST) 'A' as an alternative source of makeup water to the Reactor Pressure Vessel during MODE 4 and MODE 5, but CST 'A' is not qualified to Seismic Category I.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

It does not alter assumptions or results of analyses that verify [Emergency Core Cooling Systems (ECCS)] are capable of performing their design functions during or after a [loss-of-coolant accident (LOCA)]. It does impose a restriction on plant operation, but the restriction does not affect any accident initiator, and it improves accident mitigation capability. The proposed amendment does not change any results of previously evaluated accidents in the Updated Safety Analysis Report (USAR) nor events with which the plant must be able to cope (*e.g.,* earthquake, flooding, turbine missiles, and fire). ECCS operating procedures and administrative controls that are affected do not increase the likelihood of an event, nor do they change mitigating capabilities.

The probability of occurrence remains the same as already presented in the USAR for initiating events. Thus, since the probabilities and consequences continue to meet the licensing basis, they are not significant changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed TS amendment makes no physical change in the plant. It does not change the design functions of ECCS nor Condensate Storage Systems or components. The restriction on ECCS alignment preserves their availability and does not create the possibility of a new or different accident. It does not introduce a new or different kind of accident due to credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

LOCA analysis results are not changed nor affected by the restriction on ECCS alignment to the suppression pool, because it is consistent with conditions assumed in the analysis. Thus, the conservatism in the evaluation and analysis methods are maintained. The safety margin before the TS change is the same as after the change. This change does not exceed or alter a design basis or safety limit and does not significantly reduce the margin of safety. Since, the drain-down events in MODES 4 and 5 are bounded by the LOCA analysis, the change to TS which prohibit their alignment to the CST also do not reduce the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

Acting NRC Branch Chief: Eric R. Oesterle.

Southern California Edison Company (SCE), et al., Docket Nos. 50–206, 50–361, 50–362, and 72–041, San Onofre Nuclear Generating Station (SONGS), Units 1, 2 and 3, and Independent Spent Fuel Storage Installation, San Diego County, California

Date of amendment request: March 31, 2014, as supplemented by letter dated October 21, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML14092A249 and ML14297A016.

Description of amendment request: The proposed amendment would modify the SONGS facility operating license by revising the emergency action level (EAL) scheme consistent with the SONGS permanent shutdown and defueled status. On June 12, 2013, SCE submitted a certification of permanent cessation of power operations pursuant to 10 CFR 50.82(a)(1)(i), stating that SCE had decided to permanently cease power operation of SONGS effective June 7, 2013. With the docketing of subsequent certifications for permanent removal of fuel from the reactor vessels pursuant to 10 CFR 50.82(a)(1)(ii) on June 28, 2013, and July 22, 2013, for Units 3 and 2, respectively, the 10 CFR part 50 license for SONGS Units 2 and 3 no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2). SONGS, Unit 1, was permanently shut down in 1993 and is in the decommissioning phase. The proposed changes to the EAL scheme are being submitted to the NRC for approval prior to implementation, as required under 10 CFR 50.54(q)(4) and 10 CFR part 50, Appendix E, Section IV.B.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

[Response: No.]

San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 have permanently ceased operation. The proposed amendment would replace the existing EAL scheme with an EAL scheme that reflects the permanently shut-down status of the plant. The proposed Emergency Action Level Scheme is based on NEI [Nuclear Energy Institute] 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' Appendix C for permanently defueled stations. The proposed amendment has no effect on structures, systems, and components (SSCs) and no effect on the capability of any plant SSC to perform its design function. The proposed amendment would not increase the likelihood of the malfunction of any plant SSC.

The spent fuel pool and its support systems are used for spent fuel storage. It is expected that SONGS will remain in a wet fuel storage configuration for approximately five years. In this condition, the spectrum of postulated accidents is much smaller than for an operational plant. As a result of the certifications submitted by SCE in accordance with 10 CFR 50.82(a)(1), and the consequent removal of authorization to operate the reactor or to place or retain fuel in the reactor in accordance with 10 CFR 50.82(a)(2), most of the accident scenarios postulated in the SONGS Final Safety Analysis Report are no longer possible, and there is no significant increase in consequences of previously postulated accidents.

The proposed license amendment will not significantly increase the probability of occurrence of previously evaluated accidents, since most previously analyzed accidents can no longer occur and the probability or consequences of the few remaining are unaffected by the proposed amendment.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

[Response: No.]

The proposed amendment does not involve any change in the plant's design, configuration, or operation. The proposed changes have no impact on facility SSCs affecting the safe storage of irradiated fuel, or in the methods of operation of such SSCs, or on the handling and storage of irradiated fuel itself. The proposed EAL scheme is for the plant's defueled condition. There is no impact on the prevention, diagnosis, or mitigation of accidents previously evaluated. Accidents cannot result in different or more adverse failure modes or accidents than those previously evaluated because the reactors are permanently shut down and defueled and SONGS is no longer authorized to operate the reactors.

The proposed EAL scheme does not make changes to the systems credited in the remaining relevant accident analyses. No changes are being made to parameters within which the plant is normally operated or in the setpoints which initiate protective or mitigating actions, and no new failure modes are being introduced or new accident precursors that could initiate a new or different kind of accident. Proper control and monitoring of safety significant parameters and activities such as dose assessments to determine any radiological releases and provisions for communications and coordination with offsite organizations will be maintained.

The proposed amendment does not introduce a new mode of plant operation or new accident precursors, does not involve any physical alterations to plant configuration, or make changes to system setpoints that could initiate a new or different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

[Response: No.]

The proposed amendment to the EAL scheme will provide thresholds for initiation of Emergency Planning actions that are commensurate with the permanently defueled condition of the station. The proposed amendment does not involve a change in the plant's design, configuration, or operation. The proposed amendment does not affect either the way in which the plant SSCs perform their safety function or its design and licensing bases.

Because the 10 CFR part 50 licenses for SONGS no longer authorize operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer possible. The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses that impact the applicable postulated accidents.

The proposed changes to the SONGS EAL scheme do not impact the safe storage of irradiated fuel. The revised scheme does not affect any requirements for SSCs credited in the remaining analyses of applicable postulated accidents; and as such, does not significantly reduce the margin of safety associated with these accident analyses. Postulated design basis accidents involving the reactor are no longer possible because the reactor is permanently shut down and defueled and SONGS is no longer authorized to operate the reactors.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Walker A. Matthews, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Douglas A. Broaddus.

Southern California Edison Company (SCE), et al., Docket Nos. 50–206, 50–361, 50–362, and 72–041, San Onofre Nuclear Generating Station (SONGS), Units 1, 2 and 3, and Independent Spent Fuel Storage Installation, San Diego County, California

Date of amendment request: March 31, 2014, as supplemented by letter dated October 21, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML14092A314 and ML14345A338.

Description of amendment request: The proposed amendment would modify the SONGS facility operating license by revising the emergency plan consistent with the SONGS permanent shutdown and defueled status. On June 12, 2013, SCE submitted a certification of permanent cessation of power operations pursuant to the 10 CFR 50.82(a)(1)(i), stating that SCE had decided to permanently cease power operation of SONGS effective June 7, 2013. With the docketing of subsequent certifications for permanent removal of fuel from the reactor vessels pursuant to 10 CFR 50.82(a)(1)(ii) on June 28, 2013, and July 22, 2013, for Units 3 and 2, respectively, the 10 CFR part 50 license for SONGS, Units 2 and 3, no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2). SONGS, Unit 1, was permanently shut down in 1993 and is in the decommissioning phase. The proposed changes to the emergency plan are being submitted to the NRC for approval prior to implementation, as required under 10 CFR 50.54(q)(4) and 10 CFR part 50, Appendix E, Section IV.B.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

San Onofre Nuclear Generating Station (SONGS Units 2 and 3 have permanently ceased operation (Reference 6.5.1). The proposed amendment would replace the Radiological Emergency Response Plan (RERP) with the Permanently Defueled Emergency Plan (PDEP) to correspond to the reduced scope of remaining accidents and events. The proposed changes discontinue offsite emergency planning activities and reduce the scope of onsite emergency planning as a result of the substantially lower onsite and offsite radiological consequences of accidents possible at SONGS. The proposed amendment is consistent with the criterion discussed in Interim Staff Guidance [ISG] NSIR/DPR [Office of Nuclear Security and Incident Response/Division of Preparedness & Response]-ISG–02, ''Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants.''

The proposed amendment has no effect on structures, systems, and components (SSCs) and no effect on the capability of any plant SSC to perform its design function. The proposed amendment would not increase the likelihood of the malfunction of any plant SSC.

The spent fuel pool and its support systems are used for spent fuel storage. It is estimated that SONGS will remain in a wet fuel storage configuration for approximately five years. In this condition, the spectrum of postulated accidents is much smaller than for an operational plant. As a result of the certifications submitted by SCE in accordance with 10 CFR 50.82(a)(1), and the consequent removal of authorization to operate the reactor or to place or retain fuel in the reactor in accordance with 10 CFR 50.82(a)(2), most of the accident scenarios postulated in the SONGS Final Safety Analysis Report are no longer possible. The proposed amendment continues to maintain the effectiveness for coping with radiological emergencies that are postulated to occur in the permanently defueled condition. The ability to identify, assess, and mitigate these remaining events will be maintained such that there will be no significant increase in the consequences of any event.

The proposed license amendment will not significantly increase the probability of occurrence of previously evaluated accidents, since most previously analyzed accidents can no longer occur and the probability or consequences of the few remaining are unaffected by the proposed amendment.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve any change in the plant's design, configuration, or operation. The proposed changes discontinue offsite emergency planning activities and reduce the scope of onsite emergency planning as a result of the substantially lower onsite and offsite radiological consequences of accidents possible at SONGS. The proposed changes have no impact on facility SSCs affecting the safe storage of irradiated fuel, or on the methods of operation of such SSCs, or on the handling and storage of irradiated fuel itself. The SONGS PDEP is for the plant's defueled condition. There is no impact on the prevention, diagnosis, or mitigation [of] accidents previously evaluated. Accidents cannot result in different or more adverse failure modes or accidents than those previously evaluated because the reactors are permanently shut down and defueled and SONGS is no longer authorized to operate the reactors.

The proposed PDEP does not make changes to the systems credited in the remaining relevant accident analyses. The proposed PDEP continues to require proper control and monitoring of safety significant parameters and activities and continues to require dose assessments to determine any radiological releases and to maintain prompt communications with offsite organizations.

The proposed amendment does not result in any new mechanisms that could initiate damage to the remaining relevant safety barriers for defueled plants (*i.e.,* fuel cladding and spent fuel pool inventory). Since extended operation in a defueled condition is the only operation currently allowed, and therefore bounded by the existing analyses, such a condition does not create the possibility of a new or different kind of accident.

The proposed amendment does not introduce a new mode of plant operation or new accident precursors, does not involve any physical alterations to plant configuration, or make changes to system setpoints that could initiate a new or different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not involve a change in the plant's design, configuration, or operation. The proposed amendment does not affect either the way in which the plant SSCs perform their safety function or its design and licensing bases.

Because the 10 CFR part 50 licenses for SONGS no longer authorize operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer possible. The proposed amendment does not adversely affect the inputs or assumptions of any of the remaining design basis analyses.

The proposed changes that are limited to the SONGS PDEP do not impact the safe storage of irradiated fuel. The revised PDEP does not affect any requirements for SSCs credited in the remaining analyses of applicable postulated accidents; and as such, does not significantly reduce the margin of safety associated with these accident analyses. Postulated design basis accidents involving the reactor are no longer possible because the reactor is permanently shut down and defueled and SONGS is no longer authorized to operate the reactors.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Walker A. Matthews, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Douglas A. Broaddus.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: November 12, 2014. A publicly-available version is in ADAMS Accession No. ML14324A217.

Description of amendment request: The proposed amendment includes a revision to the site's Radiation Emergency Plan to relocate the Technical Support Center.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the VCSNS emergency plan does not impact the physical function of plant structures, systems, or components (SSC) or the manner in which SSCs perform their design function. The proposed changes neither adversely affect accident initiators or precursors, nor alter design assumptions. The proposed changes do not alter or prevent the ability of SSCs to perform their intended function to mitigate the consequences of an initiating event within assumed acceptance limits. No operating procedures or administrative controls that function to prevent or mitigate accidents are affected by the proposed changes.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed or removed) or a change in the method of plant operation. The proposed change will not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. The proposed change to the location of the TSC is not an initiator of any accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed change does not impact operation of the plant or its response to transients or accidents. The change does not affect the Technical Specifications or the operating license. The proposed change does not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Additionally, the proposed change will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by these changes. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. The emergency plan will continue to activate an emergency response commensurate with the extent of degradation of plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Robert J. Pascarelli.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Progress, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit 2, Hartsville, South Carolina

Date of amendment request: September 10, 2013, as supplemented by letter dated April 8, 2014.

Brief description of amendment: The amendment revises Technical Specification 3.4.12, ''Low Temperature Overpressure Protection System,'' to add a Note that does not require the surveillance be performed until 12 hours after decreasing the reactor coolant system cold temperature to less than or equal to 350 degrees Fahrenheit, which is the temperature when the Low Temperature Overpressure Protection operability controlled by TS 3.4.12 is credited. In addition, the Note and Frequency requirements are being revised to be consistent with NUREG–1431, Revision 3, ''Standard Technical Specifications Westinghouse Plants,'' dated June 2004.

Date of issuance: October 15, 2014.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No.: 238. A publicly-available version is in ADAMS under Accession No. ML14260A380; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–23: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: June 24, 2014 (79 FR 35803). The supplemental letter dated April 8, 2014, provided additional information that clarified the application, did not expand the scope of the application as

originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2014.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of application for amendment: January 28, 2013, as supplemented by letters dated September 16, 2013, May 12, 2014, and August 12, 2014.

Brief description of amendment: The amendment revised Technical Specification (TS) requirements related to direct current (DC) electrical systems as specified in TS Limiting Condition for Operation (LCO) 3.8.2.3, ''DC Distribution—Operating,'' and LCO 3.8.2.4, ''DC Distribution—Shutdown.'' A new TS LCO 3.8.6, ''Battery Parameters,'' is created, and a new ''Battery Monitoring and Maintenance Program'' is now required under TS Section 6.5, ''Administrative Controls—Programs and Manuals.'' These changes are consistent with the NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–500, Revision 2, ''DC Electrical Rewrite—Update to TSTF–360.'' The availability of this TS improvement was announced in the **Federal Register** on September 1, 2011 (76 FR 54510).

Date of issuance: December 4, 2014.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 297. A publicly-available version is in ADAMS under Accession No. ML14302A015; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

*Date of initial notice in **Federal Register***: April 30, 2013 (78 FR 25313). The supplemental letters dated September 16, 2013, May 12, 2014, and August 12, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 2014.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of application for amendment: December 17, 2013, as supplemented by letter dated May 13, 2014.

Brief description of amendment: The amendments revised the full implementation date (Milestone 8) of the Arkansas Nuclear One, Units 1 and 2, Cyber Security Plan.

Date of issuance: December 8, 2014.

Effective date: As of the date of issuance and shall be implemented immediately upon issuance.

Amendment Nos.: Unit 1—251; Unit 2—298. A publicly-available version is in ADAMS under Accession No. ML14322A206, documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–51 and NPF–6: The amendments revised the licenses.

*Date of initial notice in **Federal Register***: June 6, 2014 (79 FR 32763). The supplemental letter dated May 13, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 2014.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 31, 2014, as supplemented by letter dated July 2, 2014.

Brief description of amendment: The amendment revised the James A. FitzPatrick Nuclear Power Plant Cyber Security Plan (CSP) Implementation Schedule Milestone 8 full implementation date and revised the associated Physical Protection license condition. The CSP Milestone 8 full implementation date was changed from December 15, 2014, to June 30, 2016.

Date of issuance: December 1, 2014.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 308. A publicly-available version is in ADAMS under Accession No. ML14202A372; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–59: The amendment revised the Operating License.

*Date of initial notice in **Federal Register***: May 6, 2014 (79 FR 25901). The supplemental letter dated July 2, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 2014.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: December 30, 2013, as supplemented by letter dated May 22, 2014.

Brief description of amendment: The amendment revises the date of the Cyber Security Plan (CSP) Implementation Milestone 8 and the associated existing facility operating license condition regarding full implementation of the Cyber Security Plan. The CSP and associated implementation schedule was previously approved by the NRC staff by letter dated July 28, 2011 (ADAMS Accession No. ML111801243).

Date of issuance: December 8, 2014.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 253. A publicly-available version is in ADAMS under Accession No. ML14237A144; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–20: Amendment revised the Renewed Facility Operating License.

*Date of initial notice in **Federal Register***: April 15, 2014 (79 FR 21297). The supplement letter dated May 22, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 2014.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendment: April 17, 2014 (ADAMS Accession No. ML14111A257).

Brief description of amendment: The amendment revised specific Required Action Notes in the Braidwood and Byron Technical Specification (TS) Sections 3.3.1 and 3.3.2 that are no longer applicable following installation and implementation of the bypass test instrumentation modifications at the four Braidwood and Byron units. The change reflects the specific Functions that have bypass test capability installed and the specific Functions that do not have bypass test capability installed.

Date of issuance: December 7, 2014.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 180/186. A publicly-available version is in ADAMS under Accession No. ML14239A427; documents related to these amendments are listed in the Safety Evaluation (SE) enclosed with the amendments.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revised the TSs and License.

Date of initial notice in ***Federal Register:*** July 22, 2014 (79 FR 42546).

The Commission's related evaluation of the amendments is contained in a SE dated December 7, 2014.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota; and Northern States Power Company (NSPC)—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant (PINGP), Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: November 27, 2013, as supplemented by letter dated May 5, 2014.

Brief description of amendment: The amendments revised the date of the Cyber Security Plan (CSP) Implementation Milestone 8 and the existing operating license Physical Protection license condition regarding full implementation of the CSP. The CSP and associated implementation schedule were previously approved by the NRC staff in letters dated July 29, 2011 (ADAMS Accession Nos. ML11186A992 and ML11187A231).

Date of issuance: November 28, 2014.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: MNGP—186; PINGP, Unit 1—212; Unit 2—200. A publicly-available version is in ADAMS under Accession No. ML14239A257; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–22, DPR–42, and DPR–60: These amendments revised the Renewed Facility Operating License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 5, 2014 (79 FR 45493).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 28, 2014.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station (SSES), Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: December 19, 2012, as supplemented by letter dated September 25, 2014.

Brief description of amendments: The amendments reduce the reactor steam dome pressure specified within TS 2.1.1, ''Reactor Core SLs [Safety Limits].'' This change resolves a condition reported by General Electric (GE) in accordance with 10 CFR part 21, ''Reporting of Defects and Noncompliance,'' concerning a potential for SSES to momentarily violate TS 2.1.1.1 and 2.1.1.2 during a Pressure Regulator Failure Maximum Demand (Open) Pressure Regulator Failure Open transient.

Date of issuance: December 8, 2014.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 261 for Unit 1 and 242 for Unit 2. A publicly-available version is in ADAMS under Accession No. ML14321A008; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* April 2, 2013, (78 FR 19754). The supplemental letter dated September 25, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 2014.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 15th day of December 2014.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–29906 Filed 12–22–14; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OMB–3420–00015; OPIC–115]

Submission for OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is modifying an existing information collection for OMB review and approval.

DATES: Comments must be received within sixty (60) calendar days of publication of this Notice.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: Fredrick Nutt, Managing Director, Department of Management and Administration, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Fredrick Nutt, Managing Director, (202) 336–6206.

SUPPLEMENTARY INFORMATION: All mailed comments and requests for copies of the subject form should include form

number [OPIC–115] on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to *Fredrick.Nutt@opic.gov,* subject line [OPIC–115].

Summary Form Under Review

Type of Request: Revision of a currently approved information collection.

Title: Application for Project Finance.

Form Number: OPIC–115.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 150 hours (0.75 hours per response).

Number of Responses: 200 per year.

Federal Cost: $7638.00

Authority for Information Collection: Sections 231, 234(b)–(c), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for project financing and collect information for financial underwriting analysis.

Dated: December 17, 2014.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2014–29980 Filed 12–22–14; 8:45 am]

BILLING CODE 3210–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Intent To Request Extension of OMB Approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that OMB extend approval (with no changes), under the Paperwork Reduction Act, of a quarterly survey of insurance company rates for pricing annuity contracts (OMB control number 1212–0030; expires March 31, 2015). The American Council of Life Insurers (ACLI) conducts this voluntary survey for PBGC. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 23, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the Web site instructions for submitting comments.

Email: paperwork.comments@pbgc.gov.

Fax: 202–326–4224.

Mail or Hand Delivery: Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026. PBGC will make all comments available on its Web site at *http://www.pbgc.gov.*

Copies of the collection of information may be obtained without charge by writing to the Disclosure Division, Office of the General Counsel, at the above address, visiting the Disclosure Division, faxing a request to 202–326–4042, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Jo Amato Burns, Attorney, or Catherine B. Klion, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial valuation methods and assumptions (including interest rate assumptions) to be used in determining the actuarial present value of benefits under single-employer plans that terminate (29 CFR part 4044) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 4281). Each month PBGC publishes the interest rates to be used under those regulations for plans terminating or undergoing mass withdrawal during the next month.

The interest rates are intended to reflect current conditions in the annuity markets. To determine these interest rates, PBGC gathers pricing data from insurance companies that are providing annuity contracts to terminating pension plans through a quarterly ''Survey of Nonparticipating Single Premium Group Annuity Rates.'' The ACLI distributes the survey and provides PBGC with ''blind'' data (*i.e.*, PBGC is unable to match responses with the insurance companies that submitted them). PBGC also uses the information from the survey in determining the interest rates it uses to value benefits payable to participants and beneficiaries in PBGC-trusteed plans for purposes of PBGC's financial statements.

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of ACLI. The survey is conducted quarterly and will be sent to approximately 22 insurance companies. PBGC estimates that about 6 insurance companies will respond to the survey each quarter, and that each survey will require approximately 30 minutes to complete and return. PBGC further estimates that the average annual burden of this collection of information is 12 hours and $474.

OMB has approved this collection of information under control number 1212–0030 through March 31, 2015. PBGC intends to request that OMB extend its approval for another three years. 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.

PBGC is soliciting public comments to—

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the 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.

Issued in Washington, DC, this 17th day of December, 2014.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2014–30002 Filed 12–22–14; 8:45 am]

BILLING CODE 7708–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–24; Order No. 2292]

Postal Rate Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing announcing its intention to change rates not of general applicability for Inbound Parcel Post (at Universal Postal Union (UPU) Rates). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 23, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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II. Contents of Filing
III. Commission Action
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I. Introduction

Notice of filing. On December 16, 2014, the Postal Service filed notice pursuant to 39 CFR 3015.5, announcing its intention to change rates not of general applicability for Inbound Parcel Post (at Universal Postal Union (UPU) Rates) effective January 1, 2015.[1] Notice at 1–2. The timing of the filing comports with a requirement that notice of this type of change be submitted at least 15 days before the effective date. See 39 CFR 3015.5.

II. Contents of Filing

To accompany its Notice, the Postal Service filed the following attachments:

- Attachment 1—An application for non-public treatment of materials filed under seal;
- Attachment 2—A redacted copy of Governors' Decision No. 14–04;
- Attachment 3—A redacted copy of the new rates;
- Attachment 4—A copy of the certification required under 39 CFR 3015.5(c)(2); and
- Attachment 5—Documentation in support of inflation-linked adjustment for inward land rates.

Id. at 2, 3.

The Postal Service filed a redacted version of the sealed financial documents in a public Excel file. *Id.* The material filed under seal consists of unredacted copies of Governors' Decision 14–04, the new rates, and related financial information. *Id.* at 2–3.

Management analysis. The Notice contains: (1) Documentation supporting the inflation-linked adjustment as Attachment 5; (2) an update of the Postal Service's advisory delivery information submitted in a timely manner in the UPU's online compendium to justify bonus payments; (3) the date that the UPU advised the United States of the Inward Land Rate and the Calculation for the pertinent period in International Bureau Circular 206 as Attachment 3; (4) the special drawing rights (SDR) conversion rate of 1 SDR to $1.45676 U.S. dollars used for the cost coverage analysis; and (5) the estimated cost coverage for the pertinent year.

III. Commission Action

The Commission establishes Docket No. CP2015–24 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, or 3633, and 39 CFR part 3015. Comments are due no later than December 23, 2014. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Pamela A. Thompson to serve as Public Representative in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–24 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S. C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than December 23, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–29932 Filed 12–22–14; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound Parcel Post (at UPU Rates) and Application for Non-Public Treatment, December 16, 2014 (Notice).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31382; 812–14393]

Montage Managers Trust, et al.; Notice of Application

December 17, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: Montage Managers Trust (''Trust''), Palmer Square Capital Management LLC (''Palmer Square''), and Foreside Fund Services, LLC (''Foreside'').

FILING DATES: The application was filed on November 26, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request,

personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 12, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: The Trust, 11300 Tomahawk Creek Parkway, Suite 200, Leawood, KS 66211; Palmer Square, 2000 Shawnee Mission Parkway, Suite 300, Mission Woods, KS 66205; Foreside, 3 Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a Delaware statutory trust and will register under the Act as an open-end management investment company with multiple series. Each series will operate as an exchange traded fund (''ETF'').

2. Palmer Square will be the investment adviser to the initial series of the Trust (''Initial Funds''), which are described in Appendix A to the application. Each Adviser (as defined below) will be registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust will enter into a distribution agreement with one or more distributors. Each distributor for a Fund will be a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (''Exchange Act'') and will act as distributor and principal underwriter (''Distributor'') for one or more of the Funds. No Distributor will be affiliated with any national securities exchange, as defined in Section 2(a)(26) of the Act (''Exchange''). The Distributor for each Fund will comply with the terms and conditions of the requested order. Foreside, a Delaware limited liability company and broker-dealer registered under the Exchange Act, will act as the initial Distributor of the Funds.

4. Applicants request that the order apply to the Initial Funds and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future (''Future Funds'' and together with the Initial Funds, ''Funds''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Future Fund will (a) be advised by Palmer Square or an entity controlling, controlled by, or under common control with Palmer Square (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.[1]

5. Each Fund will hold certain securities, currencies, other assets, and other investment positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. The Underlying Indexes will be comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions,[2] and in the case of Foreign Funds, Component Securities and Depositary Receipts[3] representing Component Securities. Each Fund may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. Each Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index[4] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day, for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's Portfolio Holdings (defined below) before the commencement of trading of Shares on the Listing Exchange (defined below).[5]

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[5] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'')

Continued

The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[6] A ''Self-Indexing Fund'' is a Fund for which an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[7] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of a Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

11. Applicants propose that each Self-Indexing Fund will post on its Web site, on each day the Fund is open, including any day when it satisfies redemption requests as required by Section 22(e) of the Act (a ''Business Day''), before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will also provide an additional mechanism for addressing any such potential conflicts of interest.

12. In addition, Applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[8]

13. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, Palmer Square will adopt policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the ETS Securities or an associated person (''Inside Information Policy''). Any other Adviser or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics[9] and Inside Information Policy of the Adviser and any Sub-Adviser, personnel of those entities with knowledge about the composition of the Portfolio Deposit[10] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

14. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such

will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[6] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (as defined below), or in case of a sub-licensing agreement, the Adviser, must provide the use of the Affiliated Indexes (as defined below) and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[7] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[8] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[9] The Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[10] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing are referred to as the ''Portfolio Deposit.''

transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission. Applications for prior orders granted to Self-Indexing Funds have received relief to operate such funds on the basis discussed above.[11]

15. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[12] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)[13] except: (a) in the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[14] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[15] will be excluded from the Deposit Instruments and the Redemption Instruments;[16](d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[17] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

16. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) to the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[18] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[19]

17. Creation Units will consist of specified large aggregations of Shares (*e.g.,* 25,000 Shares) as determined by the Adviser, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' *i.e.,* a Broker or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''),

[11] *See, e.g.,* Guggennheim Funds Investment Advisors, LLC, Investment Company Act Release Nos. 30560 (June 14, 2013) (notice) and 30598 (July 10, 2013) (order); Sigma Investment Advisors, LLC, Investment company Act Release Nos. 30559 (June 14, 2013) (notice) and 30597 (July 10, 2013) (order); Transparent Value Trust, et al., Investment Company Act Release Nos. 30558 (June 14, 2013) (notice) and 30596 (July 10, 2013) (order); Horizons ETF Trust, et al., Investment Company Act Release Nos. 30803 (November 21, 2013) (notice) and 30833 (December 17, 2013) (order); and ETF Securities Advisors LLC, et al., Investment Company Act Release No. 31346 (November 24, 2014) (notice) (order pending).

[12] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[13] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[14] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[15] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[16] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[17] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[18] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[19] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

18. Each Business Day, before the open of trading on the Exchange on which Shares are primarily listed (''Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

19. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[20] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

20. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

21. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[21] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

22. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

23. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would

[20] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[21] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption.[22]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include

[22] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations Applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[23] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[24]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

Sections 17(a)(1) and (2) of the Act

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or

[23] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

[24] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[25] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[26] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

[25] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from Section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[26] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by Section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for a Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds'

Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-l under the Act) received from a Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the applicable Trust will execute a FOF Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not

less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29976 Filed 12–22–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73864; File No. SR–DTC–2014–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in Connection With the Amendment of the Existing Dividends Service Guide

December 17, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 [2] thereunder, notice is hereby given that on December 4, 2014, The Depository Trust Company (''DTC'') filed with the Securities Exchange Commission (''Commission'') the proposed rule change as described in Item I, II and III below, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) thereunder.[4] The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As more fully described below, the proposed rule change renames the ''Dividends Service Guide'', the ''Distributions Service Guide'' (the ''Guide''), and streamlines and updates the Guide to align with (i) the transition from the corporate actions functions of its Participant Terminal System (''PTS'')/Participant Browser Service (''PBS'') applications to the Corporate Action Web (''CA Web'') for the processing of distribution events, (ii) the migration to International Organization for Standardization (''ISO'') 20022 messaging to communicate corporate action distribution event information, and (iii) other technical changes as described below.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

With this rule filing, DTC is proposing to rename its ''Dividends Service Guide'', the ''Distributions Service Guide,'' and to streamline and update the Guide to align with: (i) The transition from the corporate actions functions of its PTS/PBS applications to CA Web for the processing of distribution events, (ii) the migration to ISO 20022 messaging to communicate corporate action distribution event information and (iii) other technical changes as described below.

On October 16, 2012, DTC filed a rule change [6] introducing the CA Web and updating its standards for communicating information related to the announcement and processing of distribution events by publishing the data in the ISO 20022 format. Use of CA Web for distributions functionality provided by BOOK, DUEB and TAXI on PTS and their PBS equivalents had become mandatory for all DTC Participants utilizing these services beginning on October 16, 2014. The balance of the PTS functions and their PBS equivalents related to distributions, EDS, DIVA, DPAL, PIAR, ADJI, SDAR (Dept. D only), and DAWN will be retired in Q1 of 2015. Therefore, DTC has updated the Guide by updating and eliminating references to PTS/PBS functions which are being replaced by CA Web functionality, and introducing the concept of ISO 20022 messaging. Additionally, the Guide has been updated for technical changes to remove a reference to the automated election instruction approval process function of the Elective Dividend Service. This optional function, is available in PBS only, provided Participant firms with an electronic means of internally reviewing and approving election instructions prior to their processing by DTC. It has been discontinued due to low levels of Participant adoption and usage.

Further, DTC has added a notice to the Important Legal Information section, advising Participants that they should obtain their own tax advice regarding any particular corporate action or other taxable event.

Implementation Date

The proposed rule change will be implemented on January 19, 2015.

2. Statutory Basis

The proposed rule change would promote efficiencies in the way that Participants submit instructions and view information for distribution event types. As such, the proposed rule change is consistent with the provisions of Section 17A(b)(3)(F) [7] of the Act which requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Terms not otherwise defined herein have the meaning set forth in the Rules.

[6] Securities Exchange Act Release No. 68114 (Oct. 26, 2012); 77 FR 66497 (Nov. 5, 2012) (SR–DTC–2012–08).

[7] 15 U.S. C. 78q–1(b)(3)(F).

(B) Self-Regulatory Organization's Statement on Burden on Competition

All Participants would be subject to the proposed change, and therefore DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received.

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) [8] of the Act and paragraph (f)(4) [9] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2014–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–DTC–2014–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S. C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://dtcc.com/legal/sec-rule-filings.aspx.* 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–DTC–2014–12 and should be submitted on or before January 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29966 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73861; File No. SR–ISEGemini–2014–24]

Self-Regulatory Organizations; ISE Gemini, LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to a Corporate Transaction Involving Its Indirect Parent

December 17, 2014

I. Introduction

On October 22, 2014, the ISE Gemini, LLC (the ''Exchange'' or the ''ISE Gemini'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to make certain amendments to its corporate governance documents and those of certain of its upstream owners, in order to effectuate changes to its indirect, non-U.S. upstream ownership structure (the ''Transactions'') [4] and to amend the Amended and Restated Limited Liability Company Agreement of ISE Gemini (''ISE Gemini LLC Agreement'') with respect to distributions of its assets. On October 31, 2014, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 12, 2014.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange proposes to make certain changes to its indirect, non-U.S. upstream ownership structure.[6] Currently, the Exchange is a wholly owned subsidiary of International Securities Exchange Holdings, Inc. (''ISE Holdings''). ISE Holdings, in turn, is a wholly owned subsidiary of U.S. Exchange Holdings, Inc. (''U.S. Exchange Holdings''), which is wholly owned by Eurex Frankfurt AG (''Eurex Frankfurt''). Eurex Frankfurt is a wholly owned subsidiary of a Swiss stock corporation, Eurex Zürich AG (''Eurex Zürich''), which, in turn, is jointly owned by Deutsche Börse AG (''Deutsche Börse'') and Eurex Global Derivatives AG (''EGD,'' and together with Eurex Zürich, the ''Swiss companies''). EGD is a wholly-owned, direct subsidiary of Deutsche Börse.[7]

As a result of the Transactions, the Swiss companies will cease to be Non-U.S. Upstream Owners of the Exchange, as Deutsche Börse will become the sole, direct owner of Eurex Frankfurt, which will directly own 85% of U.S. Exchange Holdings. Deutsche Börse will directly own the remaining 15% of U.S. Exchange Holdings. Also in connection with the Transactions, the Series A Preferred Stock of ISE Holdings (''ISE Holdings Preferred'') will be converted to shares of ISE Holdings common stock

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The amendments also update certain of the corporate governance documents to reflect prior transactions.

[5] *See* Securities Exchange Act Release No. 73531 (November 5, 2014), 79 FR 67215 (''Notice'').

[6] For a more detailed description of the anticipated steps to effectuate the Transactions, *see* Notice, *supra* note 5, at 67216.

[7] Each of Deutsche Börse, Eurex Frankfurt, Eurex Zürich, and EGD is referred to as a ''Non-U.S. Upstream Owner'' and collectively as the ''Non-U.S. Upstream Owners.''

(the ''Conversion'').[8] Upon consummation of the Transactions, U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings, which, in turn, will also remain the sole, direct owner of the Exchange.[9] In order to consummate the Transactions, including the Conversion, the Exchange proposes to amend certain of its, and its upstream owners', corporate governance documents as described below.

A. Certificate of Designations of Series A Preferred Stock of ISE Holdings

The Exchange proposes to amend and restate the Certificate of Designations of Series A Preferred Stock of ISE Holdings (the ''COD''). In particular, the Exchange proposes to amend Section 6(b) of the COD, which currently provides that the ISE Holdings Preferred is not convertible, to state that each share of ISE Holdings Preferred may, at the option of the holder thereof, be converted into one fully paid and non-assessable share of ISE Holdings common stock (''ISE Holdings Common'') on the date on which such holder delivers a duly executed notice of conversion to ISE Holdings substantially in the form of a new Annex A attached to the COD.[10]

B. Amended and Restated Certificate of Incorporation of ISE Holding

The Exchange proposes to amend and restate the Amended and Restated Certificate of Incorporation of ISE Holdings (the ''COI'') by increasing the number of authorized shares of ISE Holdings Common from 1,000 shares to 101,000 shares in order to account for the increase in the authorized number of ISE Holdings Common that will result from the Conversion.[11] As such, the total number of authorized ISE Holdings Common and ISE Holdings Preferred will increase from 101,000 shares to 201,000 shares.[12]

C. Trust Agreement

The Exchange proposes to amend and restate the Second Amended and Restated Trust Agreement (the ''Trust Agreement'') that exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein) in connection with the Transactions. Specifically, the Exchange proposes to: (i) Update the recitals of the Trust Agreement with respect to the Transactions; (ii) remove references to the Swiss companies from the definition of ''Affected Affiliate'' in section 1.1 of the Trust Agreement; (iii) remove outdated references to EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'') from the definition of ''Controlled National Securities Exchange'' in section 1.1 and update the recitals of the Trust Agreement accordingly; [13] and (iv) remove EGD's address from the notices provision in section 8.8 of the Trust Agreement.[14]

D. Certain Resolutions and Agreements

The Exchange proposes to delete certain corporate resolutions and agreements that were previously adopted by the Swiss companies that will cease to be indirect, upstream owners of ISE Gemini after the Transactions. In particular, each of the Non-U.S. Upstream Owners previously adopted resolutions, which were approved by the Commission, to incorporate measures regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange, with respect to the Non-U.S. Upstream Owners, as well as its board members, officers, employees, and agents (as applicable), to the extent that they are involved in the activities of the Exchange.[15] In addition to these resolutions, the Swiss companies previously entered into an ''Agreement and Consent,'' in which EGD agreed to provide certain information related to the activities of the Exchange, including books and records of EGD related to the activities of the Exchange, to the Commission, through Eurex Zürich. As the Swiss companies will cease to be Non-U.S. Upstream Owners of the Exchange following the consummation of the Transactions, the Exchange proposes to delete the resolutions of these entities, as referenced above, along with the Agreement and Consent, such that they will no longer be rules of the Exchange as of a date in December 2014 that corresponds to the effective closing date of the applicable step in the Transactions.

E. ISE Gemini LLC Agreement

In addition to the changes described above, the Exchange proposes to amend and restate the ISE Gemini LLC Agreement by deleting the first sentence of section 3.3 which provides that distributions may not be made to ISE Holdings except: (i) Pursuant to section 3.4 (Tax Characterization; Returns; Distributions in Respect of Taxes) of the ISE Gemini LLC Agreement; or (ii) upon liquidation of the Exchange.[16] The Exchange also proposes to clarify in section 3.3 that Regulatory Funds shall not be used for non-regulatory purposes.[17]

U.S. Exchange Holdings Certificate of Incorporation

Lastly, the Exchange proposes to make several administrative amendments to the Second Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings (''U.S. Exchange Holdings COI'') to update references therein to the Trust Agreement. Specifically, Article THIRTEENTH of the U.S. Exchange Holdings COI contains outdated references to (i) the ''Amended and Restated'' Trust Agreement, which is currently the ''Second Amended and Restated'' Trust Agreement and will become the ''Third Amended and Restated'' Trust Agreement; and (ii) the effective date of the Trust Agreement, which will be changed to a date in December 2014 that corresponds to the

[8] Upon consummation of the Transactions, all of the common stock of ISE Holdings will continue to be held by U.S. Exchange Holdings. *See* Notice, *supra* note 5, at 67216.

[9] According to the Exchange, the Transactions will not result in any additional person or entity acquiring direct or indirect ownership in the Exchange. *See* Notice, *supra* note 5, at 67216.

[10] The Exchange also proposes to retitle the COD as the ''Amended and Restated'' Certificate of Designations of Series A Preferred Stock of ISE Holdings.

[11] The Exchange also proposes to retitle the COI as the ''Second'' Amended and Restated Certificate of Incorporation of ISE Holdings and update the date thereof.

[12] The Exchange will maintain the total number of authorized ISE Holdings Preferred Stock at 100,000 shares.

[13] EDGA and EDGX previously were Controlled National Securities Exchanges, but ceased to be so as a result of a business combination whereby BATS Global Markets, Inc. became the ultimate parent company for each. *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGA–2014–34; SR–EDGX–2014–43). *See also* Notice, *supra* note 5, at 67217 n.22.

[14] The Exchange also proposes to retitle the Trust Agreement as the ''Third'' Amended and Restated Trust Agreement and update the date thereof.

[15] In this regard, the Exchange also proposes to delete the form of agreement and consent to be entered into by relevant officers and employees of the Swiss companies. *See* SR–ISEGemini–2014–24, Exhibit 5G, proposing to delete in its entirety the ''Form of Agreement and Consent (Swiss Entities).''

[16] The Exchange states that this deletion would not impact the current practice of distributions from the Exchange to ISE Holdings. *See* Notice, *supra* note 5, at 67218.

[17] As amended, section 3.3 of the ISE Gemini LLC Agreement will provide that, notwithstanding any provision to the contrary in the ISE Gemini LLC Agreement, (i) the Exchange would not be required to make a distribution to ISE Holdings if such distribution would violate the Delaware Limited Liability Company Act, any other applicable law, or is otherwise required to fulfill the regulatory functions or responsibilities of the Exchange, and (ii) Regulatory Funds will not be used for non-regulatory purposes, but rather shall be used to fund the legal. The Exchange also proposes to retitle the ISE Gemini LLC Agreement as the ''Second'' Amended and Restated Limited Liability Company Agreement, update the date thereof, and update the table of contents.

effective closing date of the applicable step in the Transactions. The Exchange also proposes to add language in Article THIRTEENTH specifying that the Trust Agreement may be amended, restated, or replaced from time to time and remove references to EDGA Exchange and EDGX Exchange from the definition of ''Controlled National Securities Exchange'' in Article TENTH.[18]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[19] Specifically, the Commission finds that the proposal is consistent with section 6(b)(1) of the Act,[20] which requires that an exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange represents that it will continue to operate and regulate its market and members in the same manner following the Transactions as it operates today.[21] The Exchange further states that the proposed rule change will facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to allow the Commission to enforce the provisions of the Act with respect to the Exchange and its direct and indirect Non-U.S. Upstream Owners, including each of their directors, officers, employees, and agents, to the extent they are involved in the activities of the Exchange.[22] The Commission notes that as a result of the Transactions, the Swiss companies will no longer be indirect, upstream owners of the Exchange, but that the upstream ownership of the Exchange otherwise remains substantially the same.[23] The Commission also notes that the Exchange has represented that it is not proposing any changes to the Exchange's operational or trading structure in connection with the Transactions.[24] The Exchange further stated that no changes will be made to other aspects of the Exchange's corporate governance documents that were previously approved by the Commission.[25]

The Commission believes that the proposed changes related to the Transactions will not impact provisions of the Exchange's, or its upstream owners, corporate governance documents that were designed to enable the ISE Gemini to operate in a manner that complies with the federal securities laws, and were intended to assist the ISE Gemini in fulfilling its self-regulatory obligations and administering and complying with the requirements of the Act.[26] The Commission also believes that the proposed rule change will allow the Commission to continue to exercise its plenary regulatory authority over the Exchange and continue to provide the Commission and the Exchange with access to necessary information that will allow the Exchange to comply, and enforce compliance, with the Act. As the Exchanges notes, the proposed administrative amendments will continue to preserve the independence of the Exchange's self-regulatory functions and ensure that it will be able to obtain any information it needs in order to address fraudulent and manipulative acts in its marketplace and carry out its regulatory responsibilities under the Act.[27]

The Commission also believes that the proposed amendments to the ISE Gemini LLC Agreement related to distributions are consistent with the Act. The Commission notes, as discussed above, that the Exchange states that the proposed changes will not impact the current practice of distributions from the Exchange to ISE Holdings, and would continue to ensure that any distributions by the Exchange to ISE Holdings, and subsequently to its indirect upstream owners, would not be made in violation of the Exchange's legal and regulatory responsibilities or with Regulatory Funds.[28] The Commission believes that the proposed rule change is designed to facilitate the ability of ISE Gemini to fulfill its regulatory obligations under the Act and will help ensure the independence of its regulatory function from its market operations and other commercial interests.[29]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[30] that the proposed rule change (SR–ISEGemini–2014–24), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29964 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

[18] The Exchange also proposes to retitle the U.S. Exchange Holdings COI as the ''Third'' Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings, and update the effective date thereof.

[19] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78s(b)(1).

[21] *See* Notice, *supra* note 5 at 67227.

[22] *See id.* at 67228.

[23] Although prior to the Transactions Deutsche Börse's interest in U.S. Exchange Holdings was held solely through its 100% indirect ownership in Eurex Frankfurt, upon consummation of the transactions it will instead directly own Eurex Frankfurt and will hold a direct 15% interest in U.S. Exchange Holdings. The remaining 85% interest in U.S. Exchange Holdings will continue to be directly held by Eurex Frankfurt.

[24] *See id.*

[25] *See id.*

[26] *See e.g.,* Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (approving the application for registration as a national securities exchange of Topaz Exchange, LLC).

[27] *See id.*

[28] *See* Notice, *supra* note 5, at 67218.

[29] The Commission notes that, as amended, the provision in ISE Gemini's LLC Agreement governing distributions will be consistent with similar provisions the Commission has previously approved for other self-regulatory organizations. *See, e.g.,* Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (approving the application for registration as a national securities exchange of Miami International Securities Exchange, LLC).

[30] 15 U.S.C. 78f(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73860; File No. SR–ISE–2014–44]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to a Corporate Transaction Involving Its Indirect Parent

December 17, 2014.

I. Introduction

On October 22, 2014, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to make certain amendments to its corporate governance documents and those of certain of its upstream owners, in order to effectuate changes to its indirect, non-U.S. upstream ownership

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

structure (the ''Transactions'')[4] and to amend the Second Amended and Restated Limited Liability Company Agreement of ISE (''ISE LLC Agreement'') with respect to distributions of its assets. On October 31, 2014, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 12, 2014.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange proposes to make certain changes to its indirect, non-U.S. upstream ownership structure.[6] Currently, the Exchange is a wholly owned subsidiary of International Securities Exchange Holdings, Inc. (''ISE Holdings''). ISE Holdings, in turn, is a wholly owned subsidiary of U.S. Exchange Holdings, Inc. (''U.S. Exchange Holdings''), which is wholly owned by Eurex Frankfurt AG (''Eurex Frankfurt''). Eurex Frankfurt is a wholly owned subsidiary of a Swiss stock corporation, Eurex Zürich AG (''Eurex Zürich''), which, in turn, is jointly owned by Deutsche Börse AG (''Deutsche Börse'') and Eurex Global Derivatives AG (''EGD,'' and together with Eurex Zürich, the ''Swiss companies''). EGD is a wholly-owned, direct subsidiary of Deutsche Börse.[7]

As a result of the Transactions, the Swiss companies will cease to be Non-U.S. Upstream Owners of the Exchange, as Deutsche Börse will become the sole, direct owner of Eurex Frankfurt, which will directly own 85% of U.S. Exchange Holdings. Deutsche Börse will directly own the remaining 15% of U.S. Exchange Holdings. Also in connection with the Transactions, the Series A Preferred Stock of ISE Holdings (''ISE Holdings Preferred'') will be converted to shares of ISE Holdings common stock (the ''Conversion'').[8] Upon consummation of the Transactions, U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings, which, in turn, will also remain the sole, direct owner of the Exchange.[9] In order to consummate the Transactions, including the Conversion, the Exchange proposes to amend certain of its, and its upstream owners', corporate governance documents as described below.

A. Certificate of Designations of Series A Preferred Stock of ISE Holdings

The Exchange proposes to amend and restate the Certificate of Designations of Series A Preferred Stock of ISE Holdings (the ''COD''). In particular, the Exchange proposes to amend Section 6(b) of the COD, which currently provides that the ISE Holdings Preferred is not convertible, to state that each share of ISE Holdings Preferred may, at the option of the holder thereof, be converted into one fully paid and non-assessable share of ISE Holdings common stock (''ISE Holdings Common'') on the date on which such holder delivers a duly executed notice of conversion to ISE Holdings substantially in the form of a new Annex A attached to the COD.[10]

B. Amended and Restated Certificate of Incorporation of ISE Holding

The Exchange proposes to amend and restate the Amended and Restated Certificate of Incorporation of ISE Holdings (the ''COI'') by increasing the number of authorized shares of ISE Holdings Common from 1,000 shares to 101,000 shares in order to account for the increase in the authorized number of ISE Holdings Common that will result from the Conversion.[11] As such, the total number of authorized ISE Holdings Common and ISE Holdings Preferred will increase from 101,000 shares to 201,000 shares.[12]

C. Trust Agreement

The Exchange proposes to amend and restate the Second Amended and Restated Trust Agreement (the ''Trust Agreement'') that exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein) in connection with the Transactions. Specifically, the Exchange proposes to: (i) Update the recitals of the Trust Agreement with respect to the Transactions; (ii) remove references to the Swiss companies from the definition of ''Affected Affiliate'' in Section 1.1 of the Trust Agreement; (iii) remove outdated references to EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'') from the definition of ''Controlled National Securities Exchange'' in Section 1.1 and update the recitals of the Trust Agreement accordingly;[13] and (iv) remove EGD's address from the notices provision in Section 8.8 of the Trust Agreement.[14]

D. Certain Resolutions and Agreements

The Exchange proposes to delete certain corporate resolutions and agreements that were previously adopted by the Swiss companies that will cease to be indirect, upstream owners of ISE after the Transactions. In particular, each of the Non-U.S. Upstream Owners previously adopted resolutions, which were approved by the Commission, to incorporate measures regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange, with respect to the Non-U.S. Upstream Owners, as well as its board members, officers, employees, and agents (as applicable), to the extent that they are involved in the activities of the Exchange. In addition to these resolutions, the Swiss companies previously entered into an ''Agreement and Consent,'' in which EGD agreed to provide certain information related to the activities of the Exchange, including books and records of EGD related to the activities of the Exchange, to the Commission, through Eurex Zürich. As the Swiss companies will cease to be Non-U.S. Upstream Owners of the Exchange following the consummation of the Transactions, the Exchange proposes to delete the resolutions of these entities, as referenced above, along with the Agreement and Consent, such that they will no longer be rules of the Exchange as of a date in December 2014 that corresponds to the effective closing

[4] The amendments also update certain of the corporate governance documents to reflect prior transactions.

[5] *See* Securities Exchange Act Release No. 73530 (November 5, 2014), 79 FR 67224 (''Notice'').

[6] For a more detailed description of the anticipated steps to effectuate the Transactions, *see* Notice, *supra* note 5, at 67225.

[7] Each of Deutsche Börse, Eurex Frankfurt, Eurex Zürich, and EGD is referred to as a ''Non-U.S. Upstream Owner'' and collectively as the ''Non-U.S. Upstream Owners.''

[8] Upon consummation of the Transactions, all of the common stock of ISE Holdings will continue to be held by U.S. Exchange Holdings. *See* Notice, *supra* note 5, at 67225.

[9] According to the Exchange, the Transactions will not result in any additional person or entity acquiring direct or indirect ownership in the Exchange. *See* Notice, *supra* note 5, at 67225.

[10] The Exchange also proposes to retitle the COD as the ''Amended and Restated'' Certificate of Designations of Series A Preferred Stock of ISE Holdings.

[11] The Exchange also proposes to retitle the COI as the ''Second'' Amended and Restated Certificate of Incorporation of ISE Holdings and update the date thereof.

[12] The Exchange will maintain the total number of authorized ISE Holdings Preferred Stock at 100,000 shares.

[13] EDGA and EDGX previously were Controlled National Securities Exchanges, but ceased to be so as a result of a business combination whereby BATS Global Markets, Inc. became the ultimate parent company for each. *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGA–2014–34; SR–EDGX–2014–43). *See also* Notice, *supra* note 5, at 67226 n.22.

[14] The Exchange also proposes to retitle the Trust Agreement as the ''Third'' Amended and Restated Trust Agreement and update the date thereof.

date of the applicable step in the Transactions.[15]

E. ISE LLC Agreement

In addition to the changes described above, the Exchange proposes to amend and restate the ISE LLC Agreement by adding a new Section 3.3 to the ISE LLC Agreement that would provide that, notwithstanding any provision to the contrary contained in the ISE LLC Agreement, (i) the Exchange would not be required to make a distribution to ISE Holdings if such distribution would violate the Delaware Limited Liability Company Act, any other applicable law, or is otherwise required to fulfill the regulatory functions or responsibilities of the Exchange, and (ii) Regulatory Funds will not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory, and surveillance operations of the Exchange and the Exchange will not make any distribution to ISE Holdings using Regulatory Funds. For purposes of proposed Section 3.3, the Exchange proposes to define the term ''Regulatory Funds'' as fees, fines or penalties derived from the regulatory operations of the Exchange, provided that Regulatory Funds does not include revenues derived from listing fees, market data revenues, transaction revenues or any other aspect of the commercial operations of the Exchange or a facility of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange.[16]

U.S. Exchange Holdings Certificate of Incorporation

Lastly, the Exchange proposes to make several administrative amendments to the Second Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings (''U.S. Exchange Holdings COI'') to update references therein to the Trust Agreement. Specifically, Article THIRTEENTH of the U.S. Exchange Holdings COI contains outdated references to (i) the ''Amended and Restated'' Trust Agreement, which is currently the ''Second Amended and Restated'' Trust Agreement and will become the ''Third Amended and Restated'' Trust Agreement; and (ii) the effective date of the Trust Agreement, which will be changed to a date in December 2014 that corresponds to the effective closing date of the applicable step in the Transactions. The Exchange also proposes to add language in Article THIRTEENTH specifying that the Trust Agreement may be amended, restated, or replaced from time to time and remove references to EDGA Exchange and EDGX Exchange from the definition of ''Controlled National Securities Exchange'' in Article TENTH.[17]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[18] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,[19] which requires that an exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange represents that it will continue to operate and regulate its market and members in the same manner following the Transactions as it operates today.[20] The Exchange further states that the proposed rule change will facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to allow the Commission to enforce the provisions of the Act with respect to the Exchange and its direct and indirect Non-U.S. Upstream Owners, including each of their directors, officers, employees, and agents, to the extent they are involved in the activities of the Exchange.[21] The Commission notes that as a result of the Transactions, the Swiss companies will no longer be indirect, upstream owners of the Exchange, but that the upstream ownership of the Exchange otherwise remains substantially the same.[22] The Commission also notes that the Exchange has represented that it is not proposing any changes to the Exchange's operational or trading structure in connection with the Transactions.[23] The Exchange further stated that no changes will be made to other aspects of the Exchange's corporate governance documents that were previously approved by the Commission.[24]

The Commission believes that the proposed changes related to the Transactions will not impact provisions of the Exchange's, or its upstream owners, corporate governance documents that were designed to enable the ISE to operate in a manner that complies with the federal securities laws, and were intended to assist the ISE in fulfilling its self-regulatory obligations and administering and complying with the requirements of the Act.[25] The Commission also believes that the proposed rule change will allow the Commission to continue to exercise its plenary regulatory authority over the Exchange and continue to provide the Commission and the Exchange with access to necessary information that will allow the Exchange to comply, and enforce compliance, with the Act. As the Exchanges notes, the proposed administrative amendments will continue to preserve the independence of the Exchange's self-regulatory functions and ensure that it will be able to obtain any information it needs in order to address fraudulent and manipulative acts in its marketplace and carry out its regulatory responsibilities under the Act.[26]

The Commission also believes that the proposed amendments to the ISE LLC Agreement related to distributions are consistent with the Act. The Commission notes that the Exchange states that these provisions will ensure any distributions by the Exchange to ISE Holdings, and subsequently to its indirect upstream owners, would not be

[15] The Exchange also proposes to delete similar resolutions of entities that had previously been Non-U.S. Upstream Owners of the Exchange, but whose status as such has since ceased. *See* SR–ISE–2014–44 Exhibit 5G, as modified by Amendment No. 1, proposing to delete in its entirety the ''Form of Swiss Parent Association Resolutions.''

[16] The Exchange also proposes to renumber existing Section 3.3 of the ISE LLC Agreement to Section 3.4. In addition, the Exchange proposes to retitle the ISE LLC Agreement as the ''Third'' Amended and Restated Limited Liability Company Agreement, update the date thereof, update the table of contents, update the name of the Exchange's President and Chief Executive Officer and update the address of the Registered Agent in Section 1.5.

[17] The Exchange also proposes to retitle the U.S. Exchange Holdings COI as the ''Third'' Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings, and update the effective date thereof.

[18] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(1).

[20] *See* Notice, *supra* note 5 at 67227.

[21] *See id.* at 67228.

[22] Although prior to the Transactions Deutsche Börse's interest in U.S. Exchange Holdings was held solely through its 100% indirect ownership in Eurex Frankfurt, upon consummation of the transactions it will instead directly own Eurex Frankfurt and will hold a direct 15% interest in U.S. Exchange Holdings. The remaining 85% interest in U.S. Exchange Holdings will continue to be directly held by Eurex Frankfurt.

[23] *See id.*

[24] *See id.*

[25] *See e.g.,* Securities Exchange Act Release Nos. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101); and 53705 (April 21, 2006), 71 FR 25260 (April 28, 2006) (SR–ISE–2006–04).

[26] *See id.*

made in violation of the Exchange's legal and regulatory responsibilities or with Regulatory Funds.[27] The Commission believes that the proposed rule change is designed to facilitate the ability of ISE to fulfill its regulatory obligations under the Act and will help ensure the independence of its regulatory function from its market operations and other commercial interests.[28]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[29] that the proposed rule change (SR–ISE–2014–44), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29972 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

[27] *See* Notice, *supra* note 5, at 67227 n.30 and accompanying text.

[28] The Commission notes that, as amended, the provision in ISE's LLC Agreement governing distributions will be consistent with similar provisions the Commission has previously approved for other self-regulatory organizations. *See, e.g.,* Securities Exchange Act Release Nos. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (approving the application for registration as a national securities exchange of Topaz Exchange, LLC); and 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (approving the application for registration as a national securities exchange of Miami International Securities Exchange, LLC).

[29] 15 U.S.C. 78f(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73857; File No. SR–NYSEArca–2014–139]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Shares of the iShares California AMT-Free Muni Bond ETF and iShares New York AMT-Free Muni Bond ETF

December 17, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 3, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes a rule change relating to shares of the following series of Investment Company Units that are currently listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3): iShares California AMT-Free Muni Bond ETF and iShares New York AMT-Free Muni Bond ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently lists and trades shares (''Shares'') of the iShares California AMT-Free Muni Bond ETF (''CA Fund'') and iShares New York AMT-Free Muni Bond ETF (''NY Fund'' and, together with the CA Fund, the ''Funds'')[4] under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units (''Units'') based on fixed income securities indexes.[5] The Funds are series of the iShares Trust (''Trust'').[6]

Blackrock Fund Advisors is the investment adviser (''BFA'' or ''Adviser'') for the Funds.[7] Blackrock Investments, LLC. is the Funds' distributor (''Distributor''). State Street Bank and Trust Company is the administrator, custodian and fund accounting and transfer agent for each Fund.

Changes to Indexes Underlying the Funds

The index currently underlying the CA Fund is the S&P California AMT-Free Muni Bond Index (''CA Index'')

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] On June 24, 2014, the Trust filed an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the Investment Company Act of 1940 (''1940 Act'') (15 U.S.C. 80a–1) (File Nos. 333–92935 and 811–09729) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 27608 (December 21, 2006) (File No. 812–13208) (''Exemptive Order'').

[5] The Funds were initially listed on the American Stock Exchange, Inc. (''Amex'') (now NYSE MKT) on October 4, 2007 pursuant to the generic listing criteria of Amex Rule 1000A. On October 6, 2008, the listings transferred from the Amex to NYSE Arca, which changes were effected pursuant to NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.

[6] The Commission previously has approved a proposed rule change relating to listing and trading on the Exchange of Units based on municipal bond indexes. *See* Securities Exchange Act Release No. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92) (order approving proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02). The Commission also has issued a notice of filing and immediate effectiveness of a proposed rule change relating to listing and trading on the Exchange of the iShares Taxable Municipal Bond Fund. *See* Securities Exchange Act Release No. 63176 (October 25, 2010), 75 FR 66815 (October 29, 2010) (SR–NYSEArca–2010–94). The Commission has approved two actively managed funds of the PIMCO ETF Trust that hold municipal bonds. *See* Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund, among others).

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

and the index underlying the NY Fund is the S&P New York AMT-Free Muni Bond Index (''NY Index'', and, together with the CA Index, the ''Municipal Bond Indexes''). As described below, Standard & Poor's Financial Services LLC (a subsidiary of the McGraw-Hill Companies, the index provider (''Index Provider'') of the Municipal Bond Indexes has proposed changes to the inclusion rules of both the CA Index and the NY Index.[8]

The Funds and the Municipal Bond Indexes

The iShares California AMT-Free Muni Bond ETF

The CA Fund currently seeks to track the investment results of the CA Index, which measures the performance of the investment-grade segment of the California municipal bond market. As of March 17, 2014, there were 1,740 issues in the CA Index.

The CA Fund generally holds municipal bond securities issued by the State of California and its municipalities whose interest payments are exempt from U.S. federal and California state income tax, the federal AMT and the federal Medicare contribution tax of 3.8% on ''net investment income.'' In addition, the Fund intends to invest any cash assets in one or more affiliated municipal money market funds, which may be advised by BFA or its affiliates. The Fund seeks to track the investment results of the Underlying Index before the fees and expenses of the Fund.

The CA Fund generally invests at least 80% of its assets in the securities of the CA Index and generally invests 90% of its assets in the securities of the CA Index and in securities that provide substantially similar exposure to the securities in the CA Index. The Fund may at times invest up to 20% of its assets in cash and cash equivalents, including money market funds advised by BFA or its affiliates, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, municipal commercial paper, and municipal bonds not included in the CA Index, but which BFA believes will help the Fund track the CA Index.

The CA Index is a subset of the S&P National AMT-Free Municipal Bond Index™ and is comprised of municipal bonds issued in the State of California. The CA Index includes municipal bonds from issuers in the State of California that are California state or local governments or agencies whose interest payments are exempt from U.S. federal and California state income taxes and the federal alternative minimum tax (''AMT''). Each bond must have a rating of at least BBB− by Standard & Poor's Ratings Services, Baa3 by Moody's Investors Service, Inc. (''Moody's''), or BBB− by Fitch, Inc. (''Fitch''). A bond must be rated by at least one of the three rating agencies in order to qualify for the Underlying Index. For the avoidance of doubt, the lowest rating will be used in determining if the bond is investment-grade. Each bond must be denominated in U.S. dollars. Each bond in the CA Index must be a constituent of an offering where the original offering amount was at least $100 million. The bond must have a minimum par amount of $25 million to be eligible for inclusion. To remain in the CA Index, bonds must maintain a minimum par amount greater than or equal to $25 million as of the next Rebalancing Date. In addition, each bond must have a minimum term to maturity and/or pre-refunded or call date greater than or equal to one calendar month to be included in the CA Index. The CA Index is a market-value weighted index, and the securities in the CA Index are updated after the close on the last business day of each month.

iShares New York AMT-Free Muni Bond ETF

The NY Fund seeks to track the investment results of the NY Index, which measures the performance of the investment-grade segment of the New York municipal bond market. As of March 17, 2014, there were 1837 issues in the NY Index.

The NY Fund generally holds municipal bond securities issued by the State of New York and its municipalities whose interest payments are exempt from U.S. federal and New York State income tax, the federal AMT and the federal Medicare contribution tax of 3.8% on ''net investment income.'' In addition, the Fund intends to invest any cash assets in one or more affiliated municipal money market funds, which may be advised by BFA or its affiliates. The Fund seeks to track the investment results of the Underlying Index before the fees and expenses of the Fund.

The Fund generally invests at least 80% of its assets in the securities of the NY Index and generally invests 90% of its assets in the securities of the Underlying Index and in securities that provide substantially similar exposure to the securities in the NY Index. The Fund may at times invest up to 20% of its assets in cash and cash equivalents, including money market funds advised by BFA or its affiliates, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, municipal commercial paper, and municipal bonds not included in the NY Index, but which BFA believes will help the Fund track the NY Index.

The NY Index also is a subset of the S&P National AMT-Free Municipal Bond Index™ and is comprised of municipal bonds issued in the State of New York. The NY Index includes municipal bonds from issuers in the State of New York that are New York state or local governments or agencies whose interest payments are exempt from U.S. federal and New York state income taxes and the federal AMT. Each bond must have a rating of at least BBB− by Standard & Poor's Ratings Services, Baa3 by Moody's, or BBB− by Fitch. A bond must be rated by at least one of the three rating agencies in order to qualify for the index. For avoidance of doubt, the lowest rating will be used in determining if the bond is investment-grade. Each bond must be denominated in U.S. dollars. Each bond in the NY Index must be a constituent of an offering where the original offering amount was at least $100 million. The bond must have a minimum par amount of $25 million to be eligible for inclusion. To remain in the NY Index, bonds must maintain a minimum par amount greater than or equal to $25 million as of the next Rebalancing Date. In addition, each bond must have a minimum term to maturity and/or pre-refunded or call date greater than or equal to one calendar month to be included in the NY Index. The NY Index is a market-value weighted index, and the securities in the Underlying Index are updated after the close on the last business day of each month.

The Revised Indexes

The Index Provider is proposing to change the rules relating to the Municipal Bond Indexes. The ''Revised NY Index'' and the ''Revised CA Index'' (each, a ''Revised Index'' and, together, the ''Revised Indexes'') will remain rules based, as described below, though the S&P Dow Jones Indices' Municipal Bond Index Committee (''Committee'') reserves the right to exercise discretion, when necessary.[9]

[8] On November 7, 2014, S&P Dow Jones Indices issued a press release announcing methodology changes for the Municipal Bond Indexes, as described below, to be implemented prior to the February 2015 month end rebalance for such indexes. The proposed changes to the underlying indexes for the Funds will be reflected in an amendment to the Funds' Registration Statement.

[9] The Index Provider with respect to the Revised Indexes is Standard & Poor's Financial Services LLC (a subsidiary of The McGraw-Hill Companies) (''S&P''). The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the

The Committee is comprised of employees or agents of S&P Dow Jones Indices. The Committee oversees the day-to-day management of the Index, including monthly rebalancing, maintenance and inclusion policies including additions and deletions of bonds, and other matters affecting the maintenance and calculation of the Revised Indexes.

The following are the criteria that will be applied to bonds included in the Revised CA Index. On each ''Rebalancing Date'' (*i.e.*, the last business day of each month), a bond must meet all of the following criteria in order to be classified as an ''Eligible Bond'' for inclusion in the Revised CA Index: (1) The bond issuer must be a local government or agency in the state of California such that interest on the bond is exempt from U.S. federal income taxes; (2) the bond must have an investment grade rating of at least BBB− by Standard & Poor's, Baa3 by Moody's, or BBB− by Fitch, and a bond must be rated by at least one of the three rating agencies; [10] and (3) the bond must be denominated in U.S. dollars.[11]

The following are the criteria that will be applied to bonds included in the Revised NY Index. On each ''Rebalancing Date'' (*i.e.*, the last business day of each month), a bond must meet all of the following criteria in order to be classified as an ''Eligible Bond'' for inclusion in the Revised NY Index; (1) the bond issuer must be a local government or agency in the state of New York such that interest on the bond is exempt from U.S. federal income taxes; (2) the bond must have an investment grade rating of at least BBB− by Standard & Poor's, Baa3 by Moody's, or BBB− by Fitch, and a bond must be rated by at least one of the three rating agencies; [12] and (3) the bond must be denominated in U.S. dollars.

With respect to each of the Revised Indexes, the market value will be used to determine the weight of the bond in the Revised Index. With respect to the Revised CA Index, the bond must have a minimum Par Amount of $15 million, and be part of an offering with an original total offering amount of at least $100 million to be eligible for inclusion. To remain in the Revised CA Index, bonds must maintain a minimum Par Amount greater than or equal to $15 million as of the next Rebalancing Date. With respect to the Revised NY Index, the bond must have a minimum Par Amount of $5 million and be part of an offering with an original total offering amount of at least $20 million to be eligible for inclusion. To remain in the Revised NY Index, bonds must maintain a minimum Par Amount greater than or equal to $5 million as of the next Rebalancing Date.

For each of the Revised Indexes, as of the Rebalancing Date, the bond must have a minimum term to maturity and/or call date greater than or equal to the next subsequent rebalance date. In addition, at each monthly rebalancing, no one issuer can represent more than 25% of the weight of the applicable Revised Index, and individual issuers that represent at least 5% of the weight of the applicable Revised Index cannot account for more than 50% of the weight of such Revised Index in aggregate.

Application of the Generic Listing Criteria

The Revised Indexes currently do not meet the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3), as described below. Accordingly, the Exchange is submitting this proposed rule change to permit the continued listing of Shares of each of the Funds. The Revised Indexes meet all of the requirements of the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3), except for those set forth in Commentary .02(a)(2).[13] Specifically, as of October 29, 2014, approximately 36.62% and 16.82% of the weight of the components of the Revised CA Index and Revised NY Index, respectively, have a minimum original principal amount outstanding of $100 million or more.

As of October 29, 2014, there were 2,882 issues in the Revised CA Index, the total dollar amount outstanding of issues in the Revised CA Index was approximately $ 164 billion and the average dollar amount outstanding of issues in the Revised CA Index was approximately $57 million. Further, the most heavily weighted component represents 0.84% of the weight of the Revised CA Index and the five most heavily weighted components represent 2.55% of the weight of the Revised CA Index.[14] Therefore, the Exchange believes that, notwithstanding that the Revised CA Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (a)(2), the Revised CA Index is sufficiently broad-based to deter potential manipulation, given that it is composed of approximately 2,882 issues. In addition, the Revised CA Index securities are sufficiently large to deter potential manipulation in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of Revised CA Index issues, as referenced above.[15]

In addition, the average daily notional trading volume for Revised CA Index components for the calendar year 2013 was approximately $404 million and the sum of the notional trading volumes for the same period was approximately $102.2 billion.

As of October 29, 2014, there were 4,581 issues in the Revised NY Index, the total dollar amount outstanding of issues in the Revised NY Index was approximately $155 billion and the average dollar amount outstanding of issues in the Revised NY Index was approximately $ 33.8 million. Further, the most heavily weighted component represents 1.02% of the weight of the Revised NY Index and the five most heavily weighted components represent 1.36% of the weight of the Revised NY Index.[16] Therefore, the Exchange

use and dissemination of material, non-public information regarding the Revised Indexes. S&P Capital IQ's Securities Evaluations (SPSE) will report the price of each bond in the Revised Indexes. S&P Capital IQ is a trademark of Standard & Poor's Financial Services LLC. S&P Capital IQ is a leading provider of multi-asset class and real time data, research and analytics to institutional investors, investment and commercial banks, investment advisors and wealth managers, corporations and universities around the world.

[10] For the avoidance of doubt, the lowest rating will be used in determining if a bond is investment grade.

[11] For clarity, the following bond types are specifically excluded: Bonds subject to the AMT; commercial paper; inverse floaters; forwards; housing bonds; insured conduit bonds where the obligor is a for-profit institution; non-insured conduit bonds; non-rated bonds; notes; taxable municipals; tobacco bonds; variable rate debt.

[12] For the avoidance of doubt, the lowest rating will be used in determining if a bond is investment grade.

[13] Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[14] Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[15] When bonds are close substitutes for one another, pricing vendors can use executed trade information from all similar bonds as pricing inputs for an individual security. This can make individual securities more liquid, because valuations for a single security are better estimators of actual trading prices when they are informed by trades in a large group of closely related securities. As a result, securities are more likely to trade at prices close to their valuation when they need to be sold.

[16] Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or

Continued

believes that, notwithstanding that the NY Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (a)(2), the Revised NY Index is sufficiently broad-based to deter potential manipulation, given that it is composed of approximately 4,581 issues. In addition, the Revised NY Index securities are sufficiently large to deter potential manipulation in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of Revised NY Index issues, as referenced above.

In addition, the average daily notional trading volume for Revised NY Index components for the calendar year 2013 was approximately $486 million and the sum of the notional trading volumes for the same period was approximately $123.1 billion.

With respect to each of the Funds, the value of each Revised Index will be calculated and disseminated via a major market data vendor at least once daily; further, the components and percentage weightings of each Revised Index also will be available from major market data vendors. In addition, the portfolio of securities held by each Fund will be disclosed daily on the Funds' Web site at *www.iShares.com.*

The Exchange represents that: (1) With respect to the Funds, except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of each 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 Units shall apply to the Shares of the Funds; and (3) the Trust is required to comply with Rule 10A–3 [17] under the Act for the initial and continued listing of the Shares of the Funds. In addition, the Exchange represents that the Shares of the Funds will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index and the applicable Intraday Indicative Value (''IIV''),[18] rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to Equity Trading Permit Holders (''ETP Holders''), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.[19]

Each of the Revised Indexes is sponsored by an organization (the ''Index Provider'') that is independent of the Funds and the Adviser. The Index Provider determines the composition and relative weightings of the securities in the Underlying Indexes and publishes information regarding the market value of the Underlying Indexes. The Index Provider with respect to the Revised Indexes is S&P Dow Jones Indices LLC (a subsidiary of The McGraw-Hill Companies) (''S&P''). The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Revised Indexes.

The current value of the Revised Indexes will be widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (b)(ii). The IIVs for Shares of the Funds are disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (c), and Commentary .01(c), respectively.

Detailed descriptions of the Funds, the Revised Indexes, 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 Funds (*www.iShares.com*), as applicable.

Net Asset Value

The NAV of each Fund will be calculated by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of outstanding shares of a Fund, generally rounded to the nearest cent.

The value of the securities and other assets and liabilities held by each Fund will be determined pursuant to valuation policies and procedures approved by the Fund's Board of Trustees (''Board'').

Each Fund will value fixed income portfolio securities, including municipal bonds, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds and municipal commercial paper using prices provided directly from independent third-party pricing services which may use matrix pricing and valuation models to derive values or from one or more broker-dealers or market makers. Certain short-term debt securities may be valued on the basis of amortized cost. Money market funds will be valued at NAV.

When market quotations are not readily available or are believed by BFA to be unreliable, a Fund's investments will be valued at fair value. Fair value determinations are made by BFA in accordance with policies and procedures approved by the Funds' Board. BFA may conclude that a market quotation is not readily available or is unreliable if a security or other asset or liability does not have a price source due to its lack of liquidity, if a market quotation differs significantly from recent price quotations or otherwise no longer appears to reflect fair value, where the security or other asset or liability is thinly traded, or where there is a significant event subsequent to the most recent market quotation. A ''significant event'' is an event that, in the judgment of BFA, is likely to cause a material change to the closing market price of the asset or liability held by a Fund.

Fair value represents a good faith approximation of the value of an asset or liability. The fair value of an asset or liability held by a Fund is the amount a Fund might reasonably expect to receive from the current sale of that asset or the cost to extinguish that liability in an arm's-length transaction.

Availability of Information

On each business day, before commencement of trading in Shares of each Fund in the Core Trading Session on the Exchange, a Fund will disclose on its Web site the portfolio that will form the basis for a Fund's calculation of NAV at the end of the business day.[20]

On a daily basis, each Fund will disclose for each portfolio security or

portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[17] 17 CFR 240.10A–3.

[18] The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session of 9:30 a.m. to 4:00 p.m., Eastern time. Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

[19] *See, e.g.,* Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca-2007–36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

[20] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

other financial instrument of a Fund the following information on the Funds' Web site: ticker symbol (if applicable), name of security and financial instrument, a common identifier such as CUSIP or ISIN (if applicable), number of shares (if applicable), and dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the applicable portfolio. The Web site information will be publicly available at no charge.

The current value of the Revised Indexes will be widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (b)(ii). The IIV for Shares of each Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (c).

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Funds' Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares of each Fund will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high speed line. Price information regarding municipal bonds, and AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds and municipal commercial paper is available from major market data vendors and third party pricing services. Price information regarding exchange-traded assets will be available from the principal exchange on which such assets are traded.

Trading Rules

The Exchange deems the Shares of each Fund to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares of the Funds will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), respectively. The Exchange represents that, for initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 [21] under the Act, as provided by NYSE Arca Equities Rule 5.3. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share of each Fund will be calculated daily and that the NAV per Share will be made available to all market participants at the same time.

Trading Halts

The Exchange will halt trading in the Shares if the circuit breaker parameters of NYSE Arca Equities Rule 7.12 have been reached. In exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider factors such as the extent to which trading in the underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other factors that may be relevant. If the Intraday Indicative Value (as defined in Commentary .01 to Rule 5.2(j)(3)) or the Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the Index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the Index value persists past the trading day in which it occurred, the Exchange will halt trading.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [22] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 5.2(j)(3). The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[23] The Exchange

[21] 17 CFR 240.10A–3.

[22] 15 U.S.C. 78f(b)(5).

[23] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

The Index Provider is a broker-dealer and has implemented a firewall and will maintain procedures designed to prevent the use and dissemination of material non-public information regarding the Revised Indexes.

The Revised Index values, calculated and disseminated at least once daily, as well as the components of the Revised Indexes and their respective percentage weightings, will be available from major market data vendors. In addition, the portfolio of securities held by the Funds will be disclosed on the Funds' Web site. The IIV for Shares of the Funds will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. The Funds' portfolio holdings will be disclosed on the Funds' Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. The current value of the Index will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Funds will include the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. If the IIV or the Revised Index values are not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Revised Index value occurs. If the interruption to the dissemination of the applicable IIV or Revised Index value persists past the trading day in which it occurred, the Corporation will halt trading. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth circumstances under which Shares of the Funds may be halted. In addition, investors will have ready access to information regarding the IIV, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, investors will have ready access to information regarding the IIV and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the continued listing and trading of exchange-traded products that hold municipal securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–139 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–139. This

file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–139, and should be submitted on or before January 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29969 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73856; File No. SR–MIAX–2014–30]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Options on Shares of the iShares ETFs

December 17, 2014.

On June 17, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options on shares of the iShares MSCI Brazil Capped ETF, iShares MSCI Chile Capped ETF, iShares MSCI Peru Capped ETF, and iShares MSCI Spain Capped ETF (collectively ''iShares ETFs''). The proposed rule change was published for comment in the **Federal Register** on July 3, 2014.[3] On August 13, 2014, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to October 1, 2014.[4] On September 25, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission received a letter from MIAX on the proposal.[6]

Section 19(b)(2) of the Act [7] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. In this case, the proposed rule change was published for notice and comment in the **Federal Register** on July 3, 2014. December 30, 2014, is 180 days from that date, and February 28, 2015, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to evaluate the proposed rule change and whether it is consistent with the Act.[8] The proposed rule change would allow the Exchange to list for trading on the Exchange options on shares of the iShares ETFs without satisfying the Exchange's listing standards, which require, in part, that the component securities of an index or portfolio of securities on which the Exchange Traded Fund Shares are based for which the primary market is in any one country that is not subject to a comprehensive surveillance sharing agreement do not represent 20% or more of the weight of the index.[9]

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates February 28, 2015, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–MIAX–2014–30).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29968 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72492 (June 27, 2014), 79 FR 38099 (SR–MIAX–2014–30) (''iShares ETFs Proposal'').

[4] *See* Securities Exchange Act Release No. 72835 (August 13, 2014), 79 FR 49140 (August 19, 2014).

[5] *See* Securities Exchange Act Release No. 73211 (September 25, 2014), 79 FR 59338 (October 1, 2014).

[6] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Brian O'Neill, Vice President and Senior Counsel, MIAX, dated October 22, 2014 (providing comment on SR–MIAX–2014–30 and SR–MIAX–2014–39) (''MIAX Letter'').

[7] 15 U.S.C. 78s(b)(2).

[8] The Commission notes that MIAX also submitted a similar proposed rule change to list and trade options on shares of certain Market Vectors ETFs. *See* Securities Exchange Act Release No. 72777 (August 6, 2014), 79 FR 47165 (August 12, 2014) (MIAX–2014–39).

[9] *See* MIAX Rule 402(i)(5)(ii)(B). The Exchange represents that each of the iShares ETFs are comprised of component securities for which the primary market is a single foreign market, and that, for each ETF, MIAX does not have a CSSA with its foreign counterpart in the applicable foreign market.

[10] *Id.*

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73858; File No. SR–NYSEMKT–2014–14]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving a Proposed Rule Change Amending Exchange Rule 967NY To Enhance the Functionality of the Trade Collar Protection Mechanism

December 17, 2014.

I. Introduction

On October 24, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 967NY relating to the Exchange's ''Trade Collar Protection'' mechanism for options. The

[1] 15 U.S. C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change was published for comment in the **Federal Register** on November 13, 2014.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange applies Trade Collar Protection to prevent the immediate execution of certain orders at prices outside of a specified parameter (referred to as a ''Trading Collar'').[4] This Trade Collar Protection mechanism is set forth in Exchange Rule 967NY(a), but the Exchange has proposed to amend Exchange Rule 967NY(a) so that the rule accurately reflects how the mechanism operates.[5]

The Trade Collar Protection mechanism applies in two scenarios: (1) The mechanism prevents the execution of certain orders when the difference between the National Best Offer (''NBO'') and the National Best Bid (''NBB'') is greater than one Trading Collar;[6] and (2) the mechanism prevents the execution of the balance of a buy order if it were to execute at a price that is the NBO plus a Trading Collar (or a price that is the NBB minus a Trading Collar for an eligible sell order).[7] In the first scenario, the Exchange will display the order at a price equal to the NBO minus one Trading Collar for sell orders or the NBB plus one Trading Collar for buy orders (the ''collared order'').[8] The Exchange will then attempt to execute or route the collared order to buy (sell) against any contra interest priced within one Trading Collar above (below) the displayed price of the collared order.[9] After a period of one second, if the collared order has not been executed or its price has not been recalculated due to changes in the market, the Trade Collar Protection mechanism will improve the collared order's displayed price by an amount equal to an additional Trading Collar.[10] The Exchange notes that the collared order will re-price before the expiration of one second as a result of certain changes in the market; specifically, an update to the NBBO that improves the same side of the market as the collared order will cause the collared order to be redisplayed at the same price as the updated NBBO.[11] A Limit Order (which is not an IOC Order, AON Order, FOK Order or NOW Order) on the same side of the market priced better than one Trading Collar from the collared order will also become subject to Trade Collar Protection and will cause the collared order to improve by one Trading Collar (which will redisplay at the new price and additional size of the new Limit Order).[12]

The second scenario arises when the difference between the NBB and NBO is within the bid-ask differential guidelines and an incoming market order or marketable limit order is partially executed upon entry but execution of the balance of the order would be at a price that is more than a Trading Collar away from the NBBO at entry.[13] Pursuant to Exchange Rule 967NY(a)(5), the balance of the partially executed order will be subject to Trade Collar Protection and displayed at the last sale price,[14] and thereafter handled the same way as an order collared in the first scenario.[15]

The Exchange has proposed to amend Exchange Rule 967NY(a) so that the description of the Trade Collar Protection mechanism conforms to its function. First, Exchange Rule 967NY(a)(1)(i) provides that the Exchange will prevent the immediate execution of market orders and marketable limit orders if the width of the bid-ask differential of the NBBO is greater than one Trading Collar. However, the Exchange states that it only prevents the immediate execution of market orders (and not marketable limit orders) when the width of the bid-ask differential of the NBBO is greater than one Trading Collar.[16] According to the Exchange, marketable limit orders (*i.e.,* orders with limit prices that are executable against the NBB or NBO), execute immediately regardless of the width of the bid-ask differential of the NBBO.[17] Accordingly, the Exchange proposes to delete the reference to marketable limit orders in Exchange Rule 967NY(a)(1)(i).

Second, the Exchange proposes to delete Exchange Rule 967NY(a)(4)(C)(iv), which provides that a market order that arrives on the same side of the market as a collared order will also be subject to Trade Collar Protection and will be displayed at the same price as the collared order. The Exchange has not yet deployed this functionality and, as such, Exchange Rule 967NY(a)(4)(C)(iv) is not an accurate reflection of the Trade Collar Protection mechanism's current operation in this regard.[18] Instead of joining the resting collared order at its displayed price, an incoming market order to buy (sell) on the same side of the market as a resting collared order actually results in both orders being displayed at a price equal to one Trading Collar above (below) the resting collared order's displayed price.[19] The Exchange notes that this is what occurs when a marketable limit order to buy (sell) is received on the same side of the market as a resting collared order and priced more than one Trading Collar above (below) the resting collared order's displayed price.[20] This handling of later-arriving marketable limit orders is currently set forth in Exchange Rule 967NY(a)(4)(C)(ii). Since market orders are actually handled the same way, in connection with the proposed deletion of Exchange Rule 967NY(a)(4)(C)(iv), the Exchange also proposes to amend Exchange Rule 967NY(a)(4)(C)(ii) to broaden its applicability to all marketable orders, which include both marketable limit orders and market orders.[21]

Third, the Exchange proposes to delete a cross reference to Exchange Rule 967NY(b)(1) in Exchange Rule 967NY(a)(2), which provides the bid-ask differentials used to determine the applicable value of the Trading Collar. Exchange Rule 925NY(b)(4) provides that the bid price for an option contract be used as the reference price for the bid-ask differential applicable to both buy and sell orders, but the Trade Collar

[3] *See* Securities Exchange Act Release No. 73544 (November 6, 2014), 79 FR 67485 (''Notice'').

[4] *See id.* Trading Collars are determined by the Exchange on a class-by-class basis and, unless announced otherwise via Trader Update, are the same value as the bid-ask differential guidelines established pursuant to Exchange Rule 925NY(b)(4). *See id.* The Exchange also notes that that the Trade Collar Protection mechanism is not available for quotes or for orders with execution conditions immediate-or-cancel (''IOC''), all-or-none (''AON''), fill-or-kill (''FOK'') and NOW. *See id.; see also* Exchange Rule 967NY(a)(3).

[5] *See id.*

[6] *See* Exchange Rule 967NY(a)(1)(i).

[7] *See* Exchange Rule 967NY(a)(1)(ii).

[8] *See* Exchange Rule 967NY(a)(4)(A).

[9] *See* Exchange Rule 967NY(a)(4)(B).

[10] *See* Exchange Rule 967NY(a)(4)(C)(iii).

[11] *See* Notice, *supra* note 3, at 67485.

[12] *See id.*

[13] *See* Notice, *supra* note 3, at 67486.

[14] *See id.; see also* Exchange Rule 967NY(a)(5). However, if there is an opportunity for trading within one Trading Collar of the last sale price, the buy (sell) order will be displayed at the NBB (NBO) established at the time of the initial execution. *See id.*

[15] *See id.*

[16] *See* Notice, *supra* note 3, at 67486.

[17] The Exchange states that it believes that an order with a limit price evidences specific interest at which the submitting market participant is willing to trade and, therefore, does not need the protection of the Trade Collar Protection mechanism. *See id.* The Exchange notes that marketable limit orders remain subject to the protections of the Exchange's ''Limit Order Filter'' as provided in in Exchange 967NY(b). *See id.*

[18] *See id.* The Exchange states that it intends to incorporate this functionality in the near future as it believes that the functionality would be beneficial to the market. *See id.*

[19] *See id.*

[20] *See* Notice, *supra* note 3, at 67486.

[21] *See* proposed Exchange Rule 967NY(a)(4)(C)(ii); *see also* Notice, *supra* note 3, at 67486.

Protection mechanism instead uses the NBO as the reference price for the value of the Trade Collar applicable to sell orders (and uses the NBB as the reference price for the Trade Collar applicable to buy orders).[22] Accordingly, in place of the current cross reference to Exchange Rule 925NY(b)(4) in Exchange Rule 967NY(a)(2), the Exchange proposes to adopt new subparagraphs (a)(2)(A) and (a)(2)(B), which codify the same numerical values as provided currently in Exchange Rule 925NY(b)(4) but make clear that the reference price for the applicable Trading Collar is the NBB for buy orders and the NBO for sell orders (rather than both values being keyed off of the NBB as Exchange Rule 925NY(b)(4) provides).[23]

The Exchange also proposes some additional clarifying changes. The Exchange proposes to amend Exchange Rule 967NY(a) to delete the terms ''inbound'' and ''incoming'' where currently used in the rule because Trade Collar Protection applies to resting orders as well as inbound or incoming orders.[24] The Exchange also proposes to delete the reference in Exchange Rule 967NY(a)(3) to the cancellation of IOC Orders, AON Orders, FOK Orders and NOW Orders if not immediately executed, as AON orders do not cancel if they are not immediately executed.[25]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[27] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange believes that the proposal assists with the maintenance of fair and orderly markets and protects investors by correcting inaccurate language in Exchange Rule 967NY(a) and clarifying the existing Trade Collar Protection functionality so that market participants can better understand how the Exchange handles certain orders in times of market dislocation. In addition, the Commission notes that the Exchange believes that the proposed functionality of the Trade Collar Protection components is consistent with the Act. In particular, the Exchange believes that its proposal to base Trading Collar values on the NBB for buy orders and the NBO for sell orders could remove impediments to and perfect the mechanism of a free and open market by using a benchmark from which a market participant would most likely derive its price.[28]

The Commission believes that the operation of the Trade Collar Protection mechanism set forth in the proposal is consistent with the Act. In addition, the Commission believes that the revised description of this mechanism should increase transparency with respect to how the mechanism operates and enhance investors' understanding of how the mechanism may affect their orders in certain market conditions. Accordingly, the Commission believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NYSEMKT–2014–14) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29970 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

[22] *See* Notice, *supra* note 3, at 67486. The Exchange states that it bases the value of the Trade Collar on the NBB for buy orders because it believes that a market participant that is looking to buy would derive its price off of what other market participants are willing to pay (*i.e.,* the prevailing bid), and similarly bases the value of the Trade Collar on the NBO for sell orders because it believes that a market participant that is looking to sell would derive its price off of what other market participants are willing to sell (*i.e.,* the prevailing offer). *See id.*

[23] *See id.*

[24] *See id.*; *see also* proposed Exchange Rule 967NY(a).

[25] *See* proposed Exchange Rule 967NY(a)(3); *see also* Notice, *supra* note 3, at 67486. The Exchange also proposes to capitalize the term ''limit order'' as used in Exchange Rule 967NY(a)(4)(D) to conform with the use of that term in the rest of the rule. *See id.* at 67487.

[26] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] *See* Notice, *supra* note 3, at 67487; *see also supra* note 22.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73859; File No. SR–NYSEArca–2014–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending Exchange Rule 6.60 To Enhance the Functionality of the Trade Collar Protection Mechanism

December 17, 2014.

I. Introduction

On October 24, 2014, NYSE Arca, Inc., (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 6.60 relating to the Exchange's ''Trade Collar Protection'' mechanism for options. The proposed rule change was published for comment in the **Federal Register** on November 13, 2014.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange applies Trade Collar Protection to prevent the immediate execution of certain orders at prices outside of a specified parameter (referred to as a ''Trading Collar'').[4] This Trade Collar Protection mechanism is set forth in Exchange Rule 6.60(a), but the Exchange has proposed to amend Exchange Rule 6.60(a) so that the rule accurately reflects how the mechanism operates.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73543 (November 6, 2014), 79 FR 67488 (''Notice'').

[4] *See id.* Trading Collars are determined by the Exchange on a class-by-class basis and, unless announced otherwise via Trader Update, are the same value as the bid-ask differential guidelines established pursuant to Exchange Rule 6.37(b)(1). *See id.* The Exchange also notes that that the Trade Collar Protection mechanism is not available for quotes or for orders with execution conditions immediate-or-cancel (''IOC''), all-or-none (''AON''), fill-or-kill (''FOK'') and NOW. *See id.; see also* Exchange Rule 6.60(a)(3).

[5] *See id.*

The Trade Collar Protection mechanism applies in two scenarios: (1) The mechanism prevents the execution of certain orders when the difference between the National Best Offer (''NBO'') and the National Best Bid (''NBB'') is greater than one Trading Collar;[6] and (2) the mechanism prevents the execution of the balance of a buy order if it were to execute at a price that is the NBO plus a Trading Collar (or a price that is the NBB minus a Trading Collar for an eligible sell order).[7] In the first scenario, the Exchange will display the order at a price equal to the NBO minus one Trading Collar for sell orders or the NBB plus one Trading Collar for buy orders (the ''collared order'').[8] The Exchange will then attempt to execute or route the collared order to buy (sell) against any contra interest priced within one Trading Collar above (below) the displayed price of the collared order.[9] After a period of one second, if the collared order has not been executed or its price has not been recalculated due to changes in the market, the Trade Collar Protection mechanism will improve the collared order's displayed price by an amount equal to an additional Trading Collar.[10] The Exchange notes that the collared order will re-price before the expiration of one second as a result of certain changes in the market; specifically, an update to the NBBO that improves the same side of the market as the collared order will cause the collared order to be redisplayed at the same price as the updated NBBO.[11] A Limit Order (which is not an IOC Order, AON Order, FOK Order or NOW Order) on the same side of the market priced better than one Trading Collar from the collared order will also become subject to Trade Collar Protection and will cause the collared order to improve by one Trading Collar (which will redisplay at the new price and additional size of the new Limit Order).[12]

The second scenario arises when the difference between the NBB and NBO is within the bid-ask differential guidelines and an incoming market order or marketable limit order is partially executed upon entry but execution of the balance of the order would be at a price that is more than a Trading Collar away from the NBBO at entry.[13] Pursuant to Exchange Rule 6.60(a)(5), the balance of the partially executed order will be subject to Trade Collar Protection and displayed at the last sale price,[14] and thereafter handled the same way as an order collared in the first scenario.[15]

The Exchange has proposed to amend Exchange Rule 6.60(a) so that the description of the Trade Collar Protection mechanism conforms to its function. First, Exchange Rule 6.60(a)(1)(i) provides that the Exchange will prevent the immediate execution of market orders and marketable limit orders if the width of the bid-ask differential of the NBBO is greater than one Trading Collar. However, the Exchange states that it only prevents the immediate execution of market orders (and not marketable limit orders) when the width of the bid-ask differential of the NBBO is greater than one Trading Collar.[16] According to the Exchange, marketable limit orders (*i.e.,* orders with limit prices that are executable against the NBB or NBO), execute immediately regardless of the width of the bid-ask differential of the NBBO.[17] Accordingly, the Exchange proposes to delete the reference to marketable limit orders in Exchange Rule 6.60(a)(1)(i).

Second, the Exchange proposes to delete Exchange Rule 6.60(a)(4)(C)(iv), which provides that a market order that arrives on the same side of the market as a collared order will also be subject to Trade Collar Protection and will be displayed at the same price as the collared order. The Exchange has not yet deployed this functionality and, as such, Exchange Rule 6.60(a)(4)(C)(iv) is not an accurate reflection of the Trade Collar Protection mechanism's current operation in this regard.[18] Instead of joining the resting collared order at its displayed price, an incoming market order to buy (sell) on the same side of the market as a resting collared order actually results in both orders being displayed at a price equal to one Trading Collar above (below) the resting collared order's displayed price.[19] The Exchange notes that this is what occurs when a marketable limit order to buy (sell) is received on the same side of the market as a resting collared order and priced more than one Trading Collar above (below) the resting collared order's displayed price.[20] This handling of later-arriving marketable limit orders is currently set forth in Exchange Rule 6.60(a)(4)(C)(ii). Since market orders are actually handled the same way, in connection with the proposed deletion of Exchange Rule 6.60(a)(4)(C)(iv), the Exchange also proposes to amend Exchange Rule 6.60(a)(4)(C)(ii) to broaden its applicability to all marketable orders, which include both marketable limit orders and market orders.[21]

Third, the Exchange proposes to delete a cross reference to Exchange Rule 6.37(b)(1) in Exchange Rule 6.60(a)(2), which provides the bid-ask differentials used to determine the applicable value of the Trading Collar. Exchange Rule 6.37(b)(1) provides that the bid price for an option contract be used as the reference price for the bid-ask differential applicable to both buy and sell orders, but the Trade Collar Protection mechanism instead uses the NBO as the reference price for the value of the Trade Collar applicable to sell orders (and uses the NBB as the reference price for the Trade Collar applicable to buy orders).[22] Accordingly, in place of the current cross reference to Exchange Rule 6.37(b)(1) in Exchange Rule 6.60(a)(2), the Exchange proposes to adopt new subparagraphs (a)(2)(A) and (a)(2)(B), which codify the same numerical values as provided currently in Exchange Rule 6.37(b)(1) but make clear that the reference price for the applicable Trading Collar is the NBB for buy orders and the NBO for sell orders (rather than both values being keyed off of the NBB as Exchange Rule 6.37(b)(1) provides).[23]

The Exchange also proposes some additional clarifying changes. The Exchange proposes to amend Exchange

[6] *See* Exchange Rule 6.60(a)(1)(i).

[7] *See* Exchange Rule 6.60(a)(1)(ii).

[8] *See* Exchange Rule 6.60(a)(4)(A).

[9] *See* Exchange Rule 6.60(a)(4)(B).

[10] *See* Exchange Rule 6.60(a)(4)(C)(iii).

[11] *See* Notice, *supra* note 3, at 67488.

[12] *See id.*

[13] *See* Notice, *supra* note 3, at 67489.

[14] *See id.; see also* Exchange Rule 6.60(a)(5). However, if there is an opportunity for trading within one Trading Collar of the last sale price, the buy (sell) order will be displayed at the NBB (NBO) established at the time of the initial execution. *See id.*

[15] *See id.*

[16] *See* Notice, *supra* note 3, at 67489.

[17] The Exchange states that it believes that an order with a limit price evidences specific interest at which the submitting market participant is willing to trade and, therefore, does not need the protection of the Trade Collar Protection mechanism. *See id.* The Exchange notes that marketable limit orders remain subject to the protections of the Exchange's ''Limit Order Filter'' as provided in in Exchange Rule 6.60(b). *See id.*

[18] *See id.* The Exchange states that it intends to incorporate this functionality in the near future as it believes that the functionality would be beneficial to the market. *See id.*

[19] *See id.*

[20] *See* Notice, *supra* note 3, at 67489.

[21] *See* proposed Exchange Rule 6.60(a)(4)(C)(ii).

[22] *See* Notice, *supra* note 3, at 67489. The Exchange states that it bases the value of the Trade Collar on the NBB for buy orders because it believes that a market participant that is looking to buy would derive its price off of what other market participants are willing to pay (*i.e.,* the prevailing bid), and similarly bases the value of the Trade Collar on the NBO for sell orders because it believes that a market participant that is looking to sell would derive its price off of what other market participants are willing to sell (*i.e.,* the prevailing offer). *See id.*

[23] *See id.*

Rule 6.60(a) to delete the terms ''inbound'' and ''incoming'' where currently used in the rule because Trade Collar Protection applies to resting orders as well as inbound or incoming orders.[24] The Exchange also proposes to delete the reference in Exchange Rule 6.60(a)(3) to the cancellation of IOC Orders, AON Orders, FOK Orders and NOW Orders if not immediately executed, as AON orders do not cancel if they are not immediately executed.[25] Finally, the Exchange proposes to amend Exchange Rule 6.37(b)(1)(E) to rectify a typographical error—Exchange Rule 6.37(b)(1)(E) states that the bid-ask differential should be no more than $1 when the last bid is $20.10 or more, but the rule should refer instead to a last bid of $20.01 or more.[26]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[28] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange believes that the proposal assists with the maintenance of fair and orderly markets and protects investors by correcting inaccurate language in Exchange Rule 6.60(a) and clarifying the existing Trade Collar Protection functionality so that market participants can better understand how the Exchange handles certain orders in times of market dislocation. In addition, the Commission notes that the Exchange believes that the proposed functionality of the Trade Collar Protection components is consistent with the Act. In particular, the Exchange believes that its proposal to base Trading Collar values on the NBB for buy orders and the NBO for sell orders could remove impediments to and perfect the mechanism of a free and open market by using a benchmark from which a market participant would most likely derive its price.[29]

The Commission believes that the operation of the Trade Collar Protection mechanism set forth in the proposal is consistent with the Act. In addition, the Commission believes that the revised description of this mechanism should increase transparency with respect to how the mechanism operates and enhance investors' understanding of how the mechanism may affect their orders in certain market conditions. Accordingly, the Commission believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NYSEArca–2014–14) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29971 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

[24] *See id.; see also* proposed Exchange Rule 6.60(a).

[25] *See* proposed Exchange Rule 6.60(a)(3); *see also* Notice, *supra* note 3, at 67489. The Exchange also proposes to capitalize the term ''limit order'' as used in Exchange Rule 6.60(a)(4)(D) to conform with the use of that term in the rest of the rule. *See id.* at 67489–67490.

[26] *See* proposed Exchange Rule 6.37(b)(1)(E); *see also* Notice, *supra* note 3, at 67489.

[27] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Notice, *supra* note 3, at 67490; *see also supra* note 22.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73863; File No. SR–FINRA–2014–051]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to In Concert Reporting of Options Positions

December 17, 2014.

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 December 11, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing to amend Rule 2360(b)(5) regarding reporting of options positions to codify an existing requirement that the reporting rules apply to all accounts acting in concert, consistent with the application of the reporting rules of the options exchanges.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2000. DUTIES AND CONFLICTS

* * * * *

2300. SPECIAL PRODUCTS

* * * * *

2360. Options

(a) No Change.
(b) Requirements
(1) through (4) No Change.
(5) Reporting of Options Positions

(A)(i)a. Conventional Options

Each member shall file or cause to be filed with FINRA a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer account, which*, acting alone or in concert,* has established an aggregate position of 200 or more option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index, combining for purposes of this subparagraph long positions in put options with short positions in call options and short

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

positions in put options with long positions in call options, provided, however, that such reporting with respect to positions in conventional index options shall apply only to an option that is based on an index that underlies, or is substantially similar to an index that underlies, a standardized index option.

b. Standardized Options

Each member that conducts a business in standardized options but is not a member of the options exchange upon which the standardized options are listed and traded shall file or cause to be filed with FINRA a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer account, which, *acting alone or in concert,* has established an aggregate position of 200 or more option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index, combining for purposes of this subparagraph long positions in put options with short positions in call options and short positions in put options with long positions in call options.

(ii) No Change.

(B) No Change.

(6) through (24) No Change.

(c) No Change.

• • • Supplementary Material:

.01 through .03 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

FINRA Rule 2360(b)(5) requires that members file, or cause to be filed, reports for each account that has an aggregate position of 200 or more options contracts (whether long or short) on the same side of the market covering the same underlying security or index. These reports are referred to as Large Options Position Reports (''LOPRs''). All LOPRs are filed electronically and The Options Clearing Corporation (''OCC'') currently hosts and maintains the LOPR reporting system. FINRA Rule 2360(b)(5)(A)(i)a. sets forth the requirements for the LOPR for conventional options.[4] FINRA Rule 2360(b)(5)(A)(i)b. sets forth the requirements for the LOPR for standardized options by members that are not members of the options exchange upon which the standardized options are listed (so called ''access members'').[5] Among other things, the LOPRs allow FINRA to confirm that firms have not exceeded the options position limits set forth in FINRA Rule 2360(b)(3).[6] The position limit requirements are uniform across the options exchanges and FINRA.[7]

The position limit rules require that all accounts acting in concert, by the same individual or entity, must be aggregated to ensure position limit compliance. Accordingly, the position report should also be based on when accounts acting in concert exceeds the 200 contract threshold. This would ensure the report is accurately capturing the entire position to monitor for position limit purposes. The options exchanges and FINRA acting through the Intermarket Surveillance Group (the ''ISG'') outlined this requirement in a May 1, 1991 Notice.[8] In addition, the LOPR Frequently Asked Questions (''FAQs'') maintained on the OCC's site that are updated by the ISG members, including FINRA, outline the requirement that the ''[m]embers must report any account or accounts acting ''in concert'' that hold over 200 contracts on either the long call/short put (bullish) or the short call/long put (bearish) side of the market.''[9] Like the position limit rules, the reporting rules and requirements are meant to be uniform across the industry.

Certain options exchanges rules are explicit about the requirement to report a position whether acting alone or in concert,[10] while FINRA and other options exchanges rules have by interpretation and relying on the ISG Notice and LOPR FAQs required firms to report such information. FINRA proposes to amend Rule 2360(b)(5)(A)(i)a. and b.[11] to codify the existing requirement that members must report each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer account which, acting alone or in concert, has established an aggregate position of 200 or more option contracts. FINRA believes that firms are already complying with this requirement as it has been a stated FINRA interpretation since May 1991. FINRA believes that harmonizing its rule with those options exchanges rules that are explicit about the in concert requirement will clarify firms reporting requirements and ensure continued consistency in monitoring for position limits.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

[4] FINRA Rule 2360(b)(5)(A)(i)a. provides that the reporting requirement for conventional index options only applies to an option that is based on an index that underlies, or is substantially similar to an index that underlies, a standardized index option. As a result, conventional index options based on customized indexes are not required to be reported. *See Notice to Members* 07–03 (January 2007); and *see also* Securities Exchange Act Release No. 54755 (November 15, 2006), 71 FR 67675 (November 22, 2006) (Order Approving File No. SR–NASD–2006–007).

[5] As noted below, the reporting rules are meant to be uniform across the industry and thus FINRA's rules only require access members to report standardized options positions to FINRA. If a firm is a member of the options exchange on which the standardized option trades, then the firm would report the LOPR to the exchange of which is a member.

[6] FINRA Rule 2360(b)(3)(A) imposes a ceiling or position limit on the number of conventional and standardized equity options contracts in each class on the same side of the market (*i.e.,* aggregating long calls and short puts or long puts and short calls) that can be held or written by a firm, a person associated with a firm, or a customer acting alone or in concert with others.

[7] *See, e.g.,* CBOE Rule 4.11, ISE Rule 412 and NYSE Arca Options Rule 6.8. The standards for the calculation of position limits for a particular underlying security are the same across the options exchanges.

[8] *See* ISG Important Notice, *Large Options Position Report (LOPR)/Mandatory Automated Reporting Requirement Notice* dated May 1, 1991 (''ISG Notice'').

[9] *See Large Options Positions Reporting (LOPR) Frequently Asked Questions (FAQs),* FAQ #24 available at *http://www.optionsclearing.com/components/docs/clearing/industry-services/lopr/lopr_faqs.pdf.*

[10] *See* BATS Rule 18.10(a), CBOE Rule 4.13(a), NYSE Arca Rule 6.6(a), and NASDAQ OMX PHLX Rule 1003(a).

[11] FINRA proposes to harmonize the reporting provision with the options exchanges for standardized options and clarify the requirement for conventional options to similarly ensure the report is accurately capturing the entire position to monitor for position limit purposes.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that clarifying that members must report options position reports for accounts of members, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer acting alone or in concert with others is necessary to fully and effectively monitor compliance with the position limit requirements, which are based on similar standards. In addition, FINRA believes that the proposed rule change will promote consistent regulation by harmonizing FINRA's rules with those of the options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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. FINRA believes that clarifying that members must report options position reports for accounts of members, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer acting alone or in concert with others is necessary to fully and effectively monitor compliance with the position limit requirements. This proposed rule change reflects existing FINRA and ISG interpretation, which has been express since 1991 and is widely understood by firms. In addition, FINRA believes that the proposed rule change will promote consistent regulation by harmonizing FINRA's rules with those of the options exchanges and thus will impose no burden on members since such reports are already being filed.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2014–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2014–051 and should be submitted on or before January 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29965 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14199 and #14200]

New York Disaster #NY–00151

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 12/15/2014.

Incident: Severe winter storms.

Incident Period: 11/19/2014 through 11/26/2014.

Effective Date: 12/15/2014.

Physical Loan Application Deadline Date: 02/13/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 09/15/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Erie.

Contiguous Counties:

New York: Cattaraugus, Chautauqua, Genesee, Niagara, Wyoming.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.875
Homeowners Without Credit Available Elsewhere	1.938
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14199 B and for economic injury is 14200 0.

The States which received an EIDL Declaration # are New York.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 15, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–29989 Filed 12–22–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2014–0306]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 36 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on November 1, 2014. The exemptions expire on November 1, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On October 1, 2014, FMCSA published a notice of receipt of Federal diabetes exemption applications from 36 individuals and requested comments from the public (79 FR 59351). The public comment period closed on October 31, 2014, and no comments were received.

FMCSA has evaluated the eligibility of the 36 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

III. Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 36 applicants have had ITDM over a range of 1 to 32 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the October 1, 2014, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows

the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 36 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b)):

Noe D. Aguilar (CA)
Paul W. Albert (WY)
David N. Banks (NC)
Wayne W. Best (PA)
Gregory K. Blythe (IL)
Justin M. Brown (MT)
Richard E. Cole (WI)
Michael W. Cooley (KS)
Steven R. Everly (IA)
Clayton G. Hardwick (KY)
Audie C. Holton (GA)
John F. Kincaid (IL)
Jerry E. King (MN)
Craig T. LaPresti (PA)
Lester M. Lee, Jr. (GA)
Aretha Lewis (VA)
Marvin D. Mathis (NC)
Brian M. McFadden (MA)
Danny D. Miracle (IN)
Patrick J. Miraflor (PA)
Sean K. Myhand (GA)
Glen R. Parry (NM)
George E. Patton (AL)
Michael J. Ramey (CO)
Richard J. Rasmussen (NE)
Mark L. Rigby (UT)
Jeffrey K. Roberts (WI)
Eric R. Storm (GA)
Daniel A. Swain (TX)
Sean P. Thomas (IN)
Glenn R. Tyrrell (MN)
Lewis W. Vaught, Jr. (NC)
Michael S. Waitkus (IL)
William L. Wiltrout (PA)
David T. Zilm (MN)
Tina L. Zimmer (IL)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 15, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–30086 Filed 12–22–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 18, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 22, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0001.

Type of Review: Extension without change of a currently approved collection.

Title: Suspicious Activity Report by Depository Institutions.

Abstract: Under 31 CFR 1020.320, FinCEN requires depository institutions, to report on a consolidated form, to a single location, reports of suspicious transactions. The Form 111 (*see 1506–0065*) is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes. This action renews the regulation only.

Affected Public: Private Sector: Businesses or other for-profits; not-for-profit institutions.

Estimated Annual Burden Hours: 1.

OMB Number: 1506–0004.

Type of Review: Extension without change of a currently approved collection.

Title: Currency Transaction Reports.

Abstract: Financial institutions file FinCEN Form 112 (*see 1506–0064*) for currency transactions in excess of $10,000 a day pursuant to 31 U.S.C. 5313(a) and 31 CFR 1010.311(a)(b). The form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes. This action renews the regulation only.

Affected Public: Private Sector: Businesses or other for-profits; not-for-profit institutions.

Estimated Annual Burden Hours: 1.

OMB Number: 1506–0005.

Type of Review: Extension without change of a currently approved collection.

Title: Currency Transaction Report by Casinos.

Abstract: Casinos and card clubs file FinCEN Form 112 (*see 1506–0064*) for currency transactions in excess of $10,000 a day pursuant to 31 U.S.C. 5313(a) and 31 CFR 1010.311. The form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes. This action renews the regulation only.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1.

OMB Number: 1506–0006.

Type of Review: Extension without change of a currently approved collection.

Title: Suspicious Activity Report by Casinos and Card Clubs.

Abstract: Under 31 CFR 1021.320, the Treasury is requiring casinos and card clubs with annual gaming revenue of more than $1,000,000 to report suspicious activities. The FinCEN Form 111 (*see 1506–0065*) is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes. This action renews the regulation only.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1.

OMB Number: 1506–0029.

Type of Review: Extension without change of a currently approved collection.

Title: Suspicious Activity Report by Insurance Companies.

Abstract: Title 31 CFR 1025.320 requires insurance companies to report suspicious activities to the Financial Crimes Enforcement Network. FinCEN Form 111 (*see 1506–0065*) is an aid to this required reporting providing the filer with a guide in completing this reporting requirement. The form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes. This action renews the regulation only.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2014–30001 Filed 12–22–14; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 18, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 22, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0090.

Type of Review: Extension without change of a currently approved collection.

Title: Form 1040–SS—U.S. Self-Employment Tax Return; Form 1040–PR—Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico), and Anejo H–PR (Form 1040–PR)—Contribuciones sobre el Empleo de Empleados Domésticos.

Form: 1040–SS, 1040–PR, Anejo H–PR (Form 1040–PR).

Abstract: Form 1040–SS (Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) and 1040–PR (Puerto Rico) are used by self-employed individuals to figure and report self-employment tax under IRC chapter 2 of Subtitle A, and provide credit to the taxpayer's social security account. Anejo H–PR is used to compute household employment taxes. Form 1040–SS and Form 1040–PR are also used by bona-fide residents of Puerto Rico to claim the additional child tax credit.

Affected Public: Individuals or households private sector: Businesses or other for-profits, farms.

Estimated Annual Burden Hours: 2,847,448.

OMB Number: 1545–0120.

Type of Review: Revision of a currently approved collection.

Title: Certain Government Payments.

Form: 1099–G.

Abstract: Form 1099–G is used by governments (primarily state and local) to report to the IRS (and notify recipients of) certain payments (*e.g.,* unemployment compensation and income tax refunds). IRS uses the information to insure that the income is being properly reported by the recipients on their returns.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 24,709,380.

OMB Number: 1545–0177.

Type of Review: Revision of a currently approved collection.

Title: Casualties and Thefts.

Form: 4684.

Abstract: Form 4684 is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 1,830,400.

OMB Number: 1545–0619.

Type of Review: Extension without change of a currently approved collection.

Title: Credit for Increasing Research Activities.

Form: 6765.

Abstract: Internal Revenue Code section 38 allows a credit against income tax for an increase in research activities in a trade or business. Form 6765 is used to figure and claim the credit for increasing research activities or to elect the reduced credit under section 280C. An individual, estate, trust, organization, or corporation claiming a credit for increasing research activities; or any S corporation, partnership, estate, or trust that allocates the credit to its shareholders, partners, or beneficiaries must complete this form and attach it to its income tax return.

Affected Public: Private sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 285,281.

OMB Number: 1545–0714.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8027—Employers Annual Information Return of Tip Income and Allocated Tips; Form 8027–T—Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips.

Form: 8027, 8027–T.

Abstract: To help IRS in its examination of returns filed by tipped employees large food or beverage establishments, they are required to report annually information concerning food or beverage operations receipts and tips reported by employees and in certain cases, the employer must allocate tips to certain employees.

Affected Public: Private sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 488,161.

OMB Number: 1545–1375.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8537—Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals.

Abstract: This document contains final regulations relating to the application of carryover of passive activity losses and credits and at risk losses to the bankruptcy estates of individuals. The final regulations affect individual taxpayers who file bankruptcy petitions under chapter 7 or chapter 11 of title 11 of the United States Code and have passive activity losses and credits under section 469 or losses under section 465.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 100.

OMB Number: 1545–1418.

Type of Review: Extension without change of a currently approved collection.

Title: REG–154000–04—Diesel Fuel and Kerosene Excise Tax; Dye Injection.

Abstract: The regulations relate to the diesel fuel and kerosene excise tax and reflect changes made by the American Jobs Creation Act of 2004 (Act) regarding mechanical dye injection systems. Under the Act, diesel fuel and kerosene that are to be used in a nontaxable use must be indelibly dyed by use of a mechanical dye injection system that satisfies the requirements set forth in the regulations.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1.

OMB Number: 1545–1435.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8706—Electronic Filing of Form W–4.

Abstract: This document contains final regulations relating to Form W–4, Employee's Withholding Allowance Certificate. The final regulations authorize employers to establish electronic systems for use by employees in filing their Forms W–4. The regulations provide employers and employees with guidance necessary to comply with the law. The regulations affect employers that establish electronic systems and their employees.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 40,000.

OMB Number: 1545–1490.

Type of Review: Extension without change of a currently approved collection.

Title: FI–28–96 (Final) Arbitrage Restrictions on Tax-Exempt Bonds.

Abstract: The recordkeeping requirements are necessary for the Service to determine that an issuer of tax-exempt bonds has not paid more than fair market value for non-purpose investments under section 148 of the Internal Revenue Code.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 1,425.

OMB Number: 1545–1796.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9084 (REG–106879–00)—Consolidated Loss Recapture Events.

Abstract: This document contains final regulations under section 1503(d) regarding the events that require the recapture of dual consolidated losses. These regulations are issued to facilitate compliance by taxpayers with the dual consolidated loss provisions and generally provide that certain events will not trigger recapture of a dual consolidated loss or payment of the associated interest charge. The regulations provide for the filing of certain agreements in such cases.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 60.

OMB Number: 1545–1924.

Type of Review: Revision of a currently approved collection.

Title: Biodiesel and Renewable Diesel Fuels Credit.

Form: 8864.

Abstract: Form 8864 is used to figure biodiesel and renewable diesel fuels credit and to claim the credit for the tax year in which the sale or use occurs. This credit consists of the biodiesel credit, renewable diesel credit, biodiesel mixture credit, renewable diesel mixture credit, and small agri-biodiesel producer credit. IRC section 40A provides a credit for biodiesel or qualified biodiesel mixtures. IRC section 38(b)(17) allows a nonrefundable income tax credit for businesses that sell or use biodiesel. The biodiesel and renewable diesel fuels credit is scheduled expired for fuel sold or used after 2013.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 110.

OMB Number: 1545–1927.

Type of Review: Extension without change of a currently approved collection.

Title: IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.

Form: 8878–A.

Abstract: Form 8878–A is used by a corporate officer or agent and an electronic return originator (ERO) to use a personal identification number (PIN) to authorize an electronic funds withdrawal for a tax payment made with a request to extend the filing due date for a corporate income tax return.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 505,400.

OMB Number: 1545–1935.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2005–40, Election to Defer Net Experience Loss in a Multiemployer Plan.

Abstract: This notice describes the election that must be filed by an eligible multiemployer plan's enrolled actuary to the Service in order to defer a net experience loss. The notice also describes the notification that must be given to plan participants and beneficiaries, to labor organization, to contributing employers and to the Pension Benefit Guaranty Corporation within 30 days of making an election with the Service and the certification that must be filed if a restricted amendment is adopted.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 960.

OMB Number: 1545–1937.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2005–41, Guidance Regarding Qualified Intellectual Property Contributions.

Abstract: This notice explains section 170(e)(1)(B)(iii) and 170(m) as added by section 882 of the American Jobs Creation Act of 2004. Under section 170(e)(1)(B)(iii), a donor's initial charitable contribution deduction for a

gift of qualified intellectual property is limited to the lesser of the donor's adjusted basis is the property or its fair market value. Under section 170(m), the donor may claim additional deduction in subsequent years if the property produces income.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 30.

OMB Number: 1545–1940.

Type of Review: Extension without change of a currently approved collection.

Title: RP–2005–26 Revenue Procedure Regarding Extended Period of Limitations for Listed Transaction Situations.

Abstract: This revenue procedure provides procedures that taxpayers and material advisors may use to disclose a listed transaction that the taxpayer previously failed to disclose.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 430.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2014–29986 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

ACTION: Proposed collection; comment request.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (CDFI) Fund, Department of the Treasury, is soliciting comments concerning the Bank Enterprise Award Program (BEA Program) Application.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all comments to Bob Ibanez, Program Manager, Bank Enterprise Award Program, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20020, by email to *bea@cdfi.treas.gov* or by facsimile to (202) 508–0089. Please note this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bob Ibanez, Program Manager, Bank Enterprise Award Program, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20020, by email to *bea@cdfi.treas.gov* or by facsimile to (202) 508–0089. Please note this is not a toll free number.

SUPPLEMENTARY INFORMATION:

OMB Number: 1559–0005.

Type of Review: Extension without substantive change.

Title: The Bank Enterprise Award Program Application.

Abstract: The purpose of the BEA Program is to provide an incentive to FDIC-insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance, within distressed communities and provide financial assistance to community development financial institutions through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. The CDFI Fund will make awards through the BEA Program to FDIC-insured depository institutions, based upon such institutions' completion of certain qualified activities, as reported in the application. The application will solicit information concerning: Applicants' eligibility to participate in the BEA Program; the quantity (value) of applicants' activities, and the extent to which such activities may be qualified activities; and appropriate supporting documentation. The questions that the application contains, and the information generated thereby, will enable the CDFI Fund to evaluate applicants' activities and determine the extent of applicants' eligibility for a BEA Program award.

Type of Review: Extension without substantive change.

Affected Public: Private Sector: Businesses or other for-profits, Not-for-profit institutions; State, Local, and Tribal Governments.

Estimated Number of Respondents: 75.

Estimated Annual Time per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 1,125 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record and may be published on the CDFI Fund Web site at *http://www.cdfifund.gov.* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 1834a, 4703, 4713, 4717; 12 CFR part 1806.

Dated: December 17, 2014.

Annie Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2014–29994 Filed 12–22–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one individual whose property and interests in property has been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the one individual identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on December 18, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On December 18, 2014, the Director of OFAC designated the following individual whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

1. ARAUJO URIARTE, Alejandra, Blvd. Guillermo Batiz Paredes No. 1100, Col. Buenos Aires, Culiacan, Sinaloa C.P. 80199, Mexico; Blvd. Enrique Felix Castro No. 1029, Col. Desarrollo Urbano Tres Rios, Culiacan, Sinaloa C.P. 80020, Mexico; Blvd. Pedro Infante No. 3050, Col. Recursos Hidraulicos, Culiacan, Sinaloa C.P. 80100, Mexico; Av. Benjamin Hill No. 5602, Col. Industrial el Palmito, Culiacan, Sinaloa C.P. 80160, Mexico; Blvd. Las Torres No. 2622 Pte., Fracc. Prados del Sol, Culiacan, Sinaloa C.P. 80197, Mexico; Lote de terreno urbano 3 manzana A, Avenida Carlos Lineo antes Avenida Andres Quintana Roo, Colonia Burocrata, Clave Catastral 07000–017–071–020–001, Culiacan Sinaloa, Mexico; Calle General Mariano Escobedo y Avenida Ramon Corona, Clave Catastral 07000–07–001–015–001, Culiacan, Sinaloa, Mexico; Avenida Carlos Lineo No. 17 Manzana E, Fraccionamiento Prolongacion Chapultepec, Clave Catastral 7000–018–104–017–001, Culiacan, Sinaloa, Mexico; Avenida Carlos Lineo No. 18 Manzana E, Fraccionamiento Prolongacion Chapultepec, Clave Catastral 7000–018–104–018–001, Culiacan, Sinaloa, Mexico; Lote de terreno urbano 14 manzana 58 zona 9, Avenida Constituyentes Alberto Terrones Benitez, Clave Catastral 7000–028–650–014, Culiacan, Sinaloa, Mexico; Lote de terreno urbano 1 manzana 58 zona 9, Avenida Alberto Terrones Benitez y Calle Francisco J. Mujica, Clave Catastral 7000–028–650–001, Culiacan, Sinaloa, Mexico; Lote de terreno urbano 23 manzana 5 primera etapa, Avenida Cerro de los Pilares, Clave Catastral 7000–15–170–023, Culiacan, Sinaloa, Mexico; Calle Topolobampo 1628, Fraccionamiento Nuevo Culiacan, Clave Catastral 07000–029–015–050–001, Culiacan, Sinaloa, Mexico; Calle Bahia de Topolobampo 1723, Fraccionamiento Nuevo Culiacan, Clave Catastral 07000–029–015–056–001, Culiacan, Sinaloa, Mexico; Lote de terreno urbano 27 manzana 181, Calle Constituyente Hilario Medina y Avenida Constituyente Antonio Ancona Albertos, Colonia Diaz Ordaz, Clave Catastral 07000–028–181–027–001, Culiacan, Sinaloa, Mexico; Departamento habitacional 103–B edificio 3–B, Calle Carlos Lineo y Avenida Josefa Ortiz de Dominguez 663, Clave Catastral 07000–018–105–029–001, Culiacan, Sinaloa, Mexico; Alvaro Obregon 6040, Colonia Villa Bonita, Culiacan, Sinaloa, Mexico; DOB 09 Feb 1929; alt. DOB 09 Feb 1931; alt. DOB 09 Feb 1932; POB Bacacoragua, Badiraguato, Sinaloa, Mexico; R.F.C. AAUA290209GZ8 (Mexico); C.U.R.P. AAUA290209MSLRRL06 (Mexico) (individual) [SDNTK].

Dated: December 18, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2014–30087 Filed 12–22–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8697

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8697, Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.

OMB Number: 1545–1031.

Form Number: Form 8697.

Abstract: Taxpayers who are required to account for all or part of any long-term contract entered into after February 28, 1986, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under Internal Revenue Code section 460(b). The IRS uses Form 8697 to determine if the interest has been figured correctly.

Current Actions: There are no changes being made to the Form 8697 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 4,333.

Estimated Time per Respondent: 16 hrs, 45 minutes.

Estimated Total Annual Burden Hours: 72,578.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–30112 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Annual Return/Report of Employee Benefit Plan

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Annual Return/Report of Employee Benefit Plan.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Annual Return/Report of Employee Benefit Plan.

OMB Number: 1545–1610.

Form Number: 5500 and Schedules.

Abstract: The Annual Return/Report of Employee Benefit Plan is an annual information return filed by employee benefit plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Current Actions: PBGC, the Department of Labor (DOL), and the Internal Revenue Service (IRS) work together to produce the Form 5500 Annual Return/Report for Employee Benefit Plan and Form 5500–SF Short Form Annual Return/Report for Small Employee Benefit Plan (Form 5500 Series), through which the regulated public can satisfy the combined reporting/filing requirements applicable to employee benefit plans.

The IRS Changes For PY 2015 Form 5500s

	Suggested Changes	Add to	Authorities	Compliance and Use For
	I. General			
1	Trust information: Name of trust Trust's EIN Name of trustee or custodian Trustee or custodian's telephone number	Form 5500, Schedule H/I, Forms 5500-SF, and 5500-Sup	IRC § 6058(a), 401(a), 501(a) Similar questions were previously on Schedule P	• Trust information used to be in Schedule P, and was added to the 2012 Form 5500 as optional items. Trust information will be mandatory items for the plan year beginning in 2015. Information will be used for EP Exam and EPCU programs. • The trust and trustee are subject to a number of requirements for which the agencies have shared jurisdiction. Collecting Trust/Trustee information will enable the agencies to efficiently monitor compliance.
2	Preparer Information: Preparer's name (including firm name, if applicable) Preparer address (include room or suite number) Preparer's telephone number	Forms 5500, 5500-SF, and 5500-Sup	IRC §§ 6058(a) 7701(a)(36), 6109, 6695, § 1.6109 Similar questions were on 2008 and previous years Form 5500.	• Optional preparer information was eliminated from Form 5500 since 2009 and added back in the 2012 Form 5500s. Preparer information will be mandatory items for the plan year beginning in 2015. • EP Exam needs at least basic information of preparers, so that Exam can contact preparers for issues relating to Form 5500s and plan qualifications. • It will assist IRS and DOL for projects relating to tax compliance and fiduciary duties. •

The IRS Changes For PY 2015 Form 5500s

	Suggested Changes	Add to	Authorities	Compliance and Use For
5	Plan document and qualification Has the Plan been timely amended for all required tax law changes? Check box ☐ Yes ☐ No Date of the last Plan amendment/ restatement for the required tax law change was adopted__/__/____ . If the Employer is an adopter of a pre-approved master and prototype (M&P), or volume submitter plan that is subject to IRS favorable opinion or advisory letter, enter the date of that letter _/__/____ and a letter serial number _____. If the plan is an individually-designed plan and received a favorable determination letter from IRS, please enter the date of Plan's last favorable determination letter __/__/____.	Schedule R, Forms 5500-SF and 5500-Sup	IRC §§6058(a) 401(a)	• Used for pre-planning to determine Remedial amendment cycle (RAC) and remedial amendment period (RAP). The initial exam letter can be tailored to respective required adoption dates under Rev. Proc. 2007-44. • Provide information on how many adopters of the pre-approved plans are in existence that is helpful for future EPCU projects or follow-ups we may want.
	UBIT Did the plan trust incur unrelated business taxable income? Check box ☐ Yes ☐ No ☐ N/A If Yes, Amount _____	Schedule H/I, Forms 5500-SF and 5500-Sup	IRC §§6058(a), 511 and 512	It will assist IRS for purpose of tax compliance to identify 401(a) trust on unrelated business income, which comes from an activity not related to the tax-exempt purpose of that trust.
	II. ESOP			
9	Is the plan an ESOP that received dividends on employer stock that were tax-deductible under section 404(k)? Check box ☐ Yes ☐ No If "yes": (i) What was the total dividend amount? _____ (ii) What was the dividend rate? _____ (iii) Were any dividends, payments in	Schedule R, Form 5500-Sup	IRC §§6047(e) 409(p), 4975	• This information is buried in the other deductions section of the taxpayer's 1120. The dollar amount of the deduction would help in classifying the return for Examinations and EPCU projects targeting potential tax abusers. • Both (b) and (c) are taken from previous Schedule E. For (b), an unreasonable dividend violates § 404(k). This information would allow us to target potential tax

The IRS Changes For PY 2015 Form 5500s

	Suggested Changes	Add to	Authorities	Compliance and Use For
	redemption of stock? Check box ☐ Yes ☐ No			abusers. (c) is the issue, which we are winning in the courts and need to pursue.
10	Is the plan a section 401(k) plan: Check box ☐ Yes ☐ No If "yes," how does the plan satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under sections 401(k)(3) and 402(m)(2)? Check box ☐ Design-based safe harbor method ☐ ADP/ACP test If ADP/ACP test is used, did the plan perform ADP/ACP testing for the plan year using the "current year testing method" for nonhighly compensated employees (Treas. Reg. section 1.401(k)-2(a)(2)(ii))? Check box ☐ Yes ☐ No	Schedule R, Forms 5500-SF, and 5500-Sup	IRC §§6058(a) 401(k), 401(m).	• It will assist IRS agents in performing pre-audit analysis and request the appropriate information when preparing the initial IDR. • Used for compliance reasons because of different rules applied for safe harbor plans. Failure to meet requirements results in disqualification of plan which may be corrected under Rev. Proc. 2013-12
	IV. Nondiscrimination & Coverage			
12	Check the box to indicate the method used by the plan to satisfy the coverage requirements under section 410(b): ☐ ratio percentage test ☐ average benefit test Does the plan satisfy the coverage and nondiscrimination tests of sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules? Check box ☐ Yes ☐ No	Schedule R, Forms 5500-SF, and 5500-Sup	IRC §§6058(a) 401(a)(4), 410(b)	• Because of changes on Determination letter program that eliminated the option to request a determination on coverage and nondiscrimination, proposal will assist IRS agents in performing pre-audit analysis and will enable agents to request the appropriate information when preparing the initial IDR. • Would provide criteria to enable Classification Specialists and EP Analysts to perform more precise return/issue selections • Compliance with respect to contributions/benefits and coverage • Encourages development/use of internal controls (for testing and aggregation rules) • VCP available under Rev. Proc. 2013-12 for failures which should be identified by sponsor earlier

The IRS Changes For PY 2015 Form 5500s				
	Suggested Changes	**Add to**	**Authorities**	**Compliance and Use For**
	V. Distributions			
	VI. International			
15	Is the Plan maintained in a U.S. territory (i.e., Puerto Rico (if no election under ERISA section 1022(i)(2) has been made), American Samoa, Guam, the Commonwealth of the Northern Mariana Islands or the U.S. Virgin Islands)? Yes__ No__	Schedule R, Forms 5500-SFand 5500-Sup	IRC §§ 6058(a) 401(a).	• Proposal will assist IRS agents in performing pre-audit analysis and make accurate selections for international audits. • This is a category of US Territory plans that are all tax qualified but are not otherwise identifiable. Current plan characteristic code 3J applies only to dual-qualified U.S.-based plans covering Puerto Rico residents; code 3C (plan not intended to qualify) includes plans exempt under Puerto Rico law (not US law) and limited to Puerto Rico residents, where the 1122(i)(2) election for dual qualification has not been made. • The proposal would better meet compliance objectives by addressing issues identified by the international compliance group.

The aforementioned changes will generate and increase in burden by 21,000 hours and increase the estimated number of responses by 36,000 per year. Form 5500–SUP is a paper-only form filed with the IRS that is used by the sponsors and administrators of retirement plans to satisfy the reporting requirements of section 6058. Form 5500–SUP should only be used if certain IRS compliance questions are not answered electronically on the Form 5500 or Form 5500–SF. The creation of Form 5500–SUP, may create a new paper filing requirement. The paper submission of this form will increase the estimated number of responses by 500 and the estimated annual burden by 7,140 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals and households, not-for profit institutions, and farms.

Estimated Number of Respondents: 822,500.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 347,140.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 2014.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2014–29939 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activity; Proposed Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning, Automatic Contribution Arrangements.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Automatic Contribution Arrangements.

OMB Number: 1545–2135.

Regulation Project Number: TD 9447.

Abstract: This regulation provides guidance on how a qualified cash or deferred arrangement can become a qualified automatic contribution arrangement and avoid the ADP test of section 401(k)(3)(A)(ii). The regulation also provides guidance on how an automatic contribution arrangement can permit an employee to make withdrawals from an eligible automatic contribution arrangement that he did not wish to have the employer make.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 30,000.

Estimated Time per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 2014.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–30110 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting; correction.

SUMMARY: In the **Federal Register** notice that was originally published on December 10, 2014, (Volume 79, Number 237, Page 73404) the meeting location was inadvertently omitted. The location of the meeting is: Albuquerque, New Mexico.

DATES: The meetings will be held Monday, January 12, 2015 and Tuesday, January 13, 2015.

FOR FURTHER INFORMATION CONTACT: Theresa Singleton at 1–888–912–1227 or 202–317–3329.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Monday, January 12, 2015, from 1:00 p.m. to 4:30 p.m., and Tuesday, January 13, 2015, from 8:00 a.m. to 4:30 p.m. Mountain Time in Albuquerque, New Mexico. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Theresa Singleton. For more information please contact: Theresa Singleton at 1–888–912–1227 or 202–317–3329, TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: December 16, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–30075 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting; correction.

SUMMARY: In the **Federal Register** notice that was originally published on December 10, 2014, (Volume 79, Number 237, Page 73404) the meeting location was inadvertently omitted. The location of the meeting is: Little Rock, Arkansas.

DATES: The meetings will be held Monday, January 12, 2015 and Tuesday, January 13, 2015.

FOR FURTHER INFORMATION CONTACT: Kim Vinci at 1–888–912–1227 or 916–974–5086.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting with the Taxpayer Advocacy Panel Special Projects Committee will be held Monday, January 12, 2015, from 1:00 p.m. to 4:30 p.m., and Tuesday, January 13, 2015, from 8:00 a.m. to 4:30 p.m. Central Time in Little Rock, Arkansas. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Kim Vinci. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave., Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include a discussion on various special topics with IRS processes.

Dated: December 16, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–30094 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee; Correction

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting; correction.

SUMMARY: In the **Federal Register** notice that was originally published on December 10, 2014, (Volume 79, Number 237, Page 73404) the meeting location was inadvertently omitted. The location of the meeting is: Albuquerque, New Mexico.

DATES: The meeting will be held Thursday, January 15, 2015, through Friday, January 16, 2015.

FOR FURTHER INFORMATION CONTACT: Lisa Billups at 1–888–912–1227 or (214) 413–6523.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, January 15, 2015, from 8:00 a.m. to 4:30 p.m., and Friday, January 16, 2015, from 8:00 a.m. to 12:00 p.m. Mountain Time in Albuquerque, New Mexico. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Lisa Billups. For more information please contact: Lisa Billups at 1–888–912–1227 or 214–413–6523, or write TAP Office 1114 Commerce Street, Dallas, TX 75242–1021, or post comments to the Web site: *http://www.improveirs.org*.

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: December 16, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–29935 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee; Correction

AGENCY: Internal Revenue Service (IRS), Treasury Department.

ACTION: Notice of meeting; correction

SUMMARY: In the **Federal Register** notice that was originally published on December 10, 2014, (Volume 79, Number 237, Page 73404) the meeting location was inadvertently omitted. The location of the meeting is: Atlanta, Georgia.

DATES: The meetings will be held Monday, January 12, 2015 through Tuesday, January 13, 2015.

FOR FURTHER INFORMATION CONTACT: Linda Rivera at 1–888–912–1227 or (202) 317–3337.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Monday, January 12, 2015, from 1:00 p.m. to 4:30 p.m. and Tuesday, January 13, 2015, from 8:00 a.m. to 4:30 p.m. Eastern Time in Atlanta, Georgia. Notification of intent to participate must be made with Linda Rivera. For more information please contact: Linda Rivera at 1–888–912–1227 or (202)317–3337, or write TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org*.

The committee will be discussing Toll-free issues and public input is welcomed.

December 16, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–29936 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting; correction.

SUMMARY: In the **Federal Register** notice that was originally published on December 10, 2014, (Volume 79, Number 237, Page 73404) the meeting location was inadvertently omitted. The location of the meeting is: Atlanta, Georgia.

DATES: The meetings will be held Thursday, January 15, 2015 and Friday January 16, 2015.

FOR FURTHER INFORMATION CONTACT: Robin Owsley at 1–888–912–1227 or (317) 685–7627.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Thursday, January 15, 2015 from 8:00 a.m. to 4:30 p.m. and Friday, January 16, 2015, from 8:00 a.m. to 12:00 p.m. Eastern Time in Atlanta, Georgia. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Robin Owsley. For more information please contact: Robin Owsley at 1–888–912–1227 or (317) 685–7627or write: TAP Office, 575 N. Pennsylvania, Indianapolis, IN 46204 or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various issues related to services provided by the Taxpayer Assistance Centers. Public input is welcomed.

Dated: December 16, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–29937 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting; correction.

SUMMARY: In the **Federal Register** notice that was originally published on December 10, 2014, (79 FR 73404) the meeting location was inadvertently omitted. The location of the meeting is: Little Rock, Arkansas.

DATES: The meetings will be held Thursday, January 15, 2015 and Friday, January 16, 2015.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be

held Thursday, January 15, 2015, from 8:00 a.m. to 4:30 p.m. and Friday, January 16, 2015, from 8:00 a.m. to 12:00 p.m. Central Time in Little Rock, Arkansas. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Donna Powers. For more information please contact: Donna Powers at 1–888–912–1227 or (954) 423–7977 or write: TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org*.

The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: December 16, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–30076 Filed 12–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0353]

Agency Information Collection (Certification of Lessons Completed): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0353'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov*. Please refer to ''OMB Control No. 2900–0353'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Certification of Lessons Completed, VA Forms 22–6553b and 22–6553b–1.

OMB Control Number: 2900–0353.

Type of Review: Revision of a currently approved collection.

Abstract: Students enrolled in a correspondence school complete VA Forms 22–6553b and 22–6553b–1 to report the number of correspondence course lessons completed and forward the forms to the correspondence school for certification. School official certifies the number of lessons serviced and submits the forms to VA for processing. Benefits are payable based on the data provided on the form. Benefits are not payable when students interrupt, discontinue, or complete the training. VA uses the data collected to determine the amount of benefit is payable.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2014, at pages 59556–59557.

Affected Public: Individuals or households, and Business or other for-profit.

Estimated Annual Burden: 109 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: An average of 3 responses per respondent annually.

Estimated Number of Respondents: 217.

Annual Number of Respondents: 217.

Annual Number of Responses Annually per Respondent: 3.

Estimated Number of Responses: 651.

Dated: December 18, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–30017 Filed 12–22–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0368]

Agency Information Collection (Monthly Statement of Wages Paid to Trainee): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or send through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0368'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov*. Please refer to ''OMB Control No. 2900–0368'' in any correspondence.

SUPPLEMENTARY INFORMATION: *Title:* Monthly Statement of Wages Paid to Trainee (chapter 31, title 38, U.S.C.), VA Form 28–1917.

OMB Control Number: 2900–0368.

Type of Review: Revision of a currently approved collection.

Abstract: Employers providing on-job or apprenticeship training to veterans complete VA Form 28–1917 to report each Veteran's wages during the preceding month. VA uses the information to determine whether the Veteran is receiving the appropriate wage increase and correct rate of subsistence allowance.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2014, at pages 59568–59563.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,800 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 300.

Estimated Total Annual Responses: 3,600.

Dated: December 18, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–30018 Filed 12–22–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0822]

Agency Information Collection (Reimbursement of Certain Medical Expenses for Camp Lejeune Family Members) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revised collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to obtain an accurate and comprehensive assessment of satisfaction of patients who receive mental health care services and on outcomes for Veterans who seek mental health treatment from VHA. Data will allow the program office to ensure that the target audience is being reached, effective treatments are being offered, and tangible, quantitative results are being measured and tracked for continual program improvement.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before. February 23, 2015.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Audrey Revere, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Audrey.revere@va.gov.* Please refer to ''OMB Control No. 2900–0822, Reimbursement of Certain Medical Expenses for Camp Lejeune Family Members'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Audrey Revere at (202) 461–5694.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Reimbursement of Certain Medical Expenses for Camp Lejeune Family Members.

OMB Control Number: 2900–0822.

Type of Review: Revision of a currently existing collection.

Abstract: Under 38 U.S.C. 1787, VA is required to furnish hospital care and medical services to the family members of certain veterans who were stationed at Camp Lejeune between 1957 and 1987. In order to furnish such care, VA must collect certain information from the family members to ensure that they meet the requirements of the law. VA cannot furnish the statutorily-mandated hospital care and medical services until the collection of information is approved. The specific hospital care and medical services that VA must provide are for a number of illnesses and conditions connected to exposure to contaminated drinking water while at Camp Lejeune. Many of these conditions are life-threatening and require immediate medical attention. Therefore, VA certifies that the collection of information meets each of the listed criteria for the following reasons:

(i) The collection is needed prior to the expiration of time periods established under this Part, because we anticipate that the regulations authorizing VA to furnish hospital care and medical service to Camp Lejeune family members will publish and become effective prior to the expiration of the time periods established under this Part.

(ii) The collection is essential to the mission of the agency, because VA cannot begin to furnish the hospital care and medical services set forth in regulation and required by law, to Camp Lejeune family members without forms without first collecting required information.

(iii) VA cannot reasonably comply with the normal clearance procedures because public harm is reasonably likely to result if normal clearance procedures are followed. VA will furnish Camp Lejeune family members with hospital care and medical services for 15 illnesses and conditions that are life threatening and require immediate medical intervention.

Affected Public: Individuals or Households.

Estimated Total Annual Burden: 5,838 hours.

Estimated Average Burden per Respondent: 18.75 minutes.

Frequency of Response: Yearly.

Estimated Number of Respondents: 21,720.

Dated: December 17, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2014–29931 Filed 12–22–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0171]

Agency Information Collection (Application for Individualized Tutorial Assistance): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0171'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0171'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Individualized Tutorial Assistance, VA Form 22–1990t.

OMB Control Number: 2900–0171.

Type of Review: Revision of a currently approved collection.

Abstract: Students receiving VA educational assistance and need tutoring to overcome a deficiency in one or more course complete VA Form 22–1990t to apply for supplemental allowance for tutorial assistance. The student must provide the course or courses for which he or she requires tutoring, the number of hours and charges for each tutorial session and the name of the tutor. The tutor must certify that he or she provided tutoring at the specified charges and that he or she is not a close relative of the student. Certifying officials at the student's educational institution must certify that the tutoring was necessary for the student's pursuit of program; the tutor was qualified to conduct individualized tutorial assistance; and the charges for the tutoring did not exceed the customary charges for other students who receive the same tutorial assistance.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2014, at page 59563.

Affected Public: Individuals or households.

Estimated Annual Burden: 2000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1000.

Dated: December 18, 2014.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29995 Filed 12–22–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection (VA Meds by Mail Order Form, VA Form 10–0426) Activities: Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 22, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–NEW (VA Meds by Mail Order Form)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–NEW (VA Meds by Mail)'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: VA Meds by Mail Order Form.

OMB Control Number: 2900–NEW (VA Meds by Mail Order Form, VA Form 10–0426).

Type of Review: New collection.

Abstract: VA Form 10–0426, Meds by Mail (MbM) Order Form, is used by eligible CHAMPVA and Spina Bifida beneficiaries (also referred to as patient) in accordance with 38 CFR 17.270, 17.271 and 17.272 when submitting a paper prescription written by their medical provider for fulfillment through the Meds by Mail Program. Information collected on this form is necessary for proper patient identification and medical record review.

The provisions of VHA Handbook 1108.05, Outpatient Pharmacy Services, require that, as a condition for dispensing a prescription, the prescription must contain the following patient identifiers:

(1) Patient's Full Name
(2) Social Security Number
(3) Patient's Current Address

Local Meds by Mail Desk Procedure utilizes date of birth as an additional patient identifier.

The provisions of VHA Handbook 1108.05, Outpatient Pharmacy Services require pharmacists to review the patient medical record for the presence of allergy information and the potential for adverse drug events prior to the dispensing of medication to the patient.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 8, 2014, at page 60896.

Affected Public: Individuals or households.

Estimated Annual Burden: 9,167 burden hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Yearly.

Estimated Number of Respondents: 110,000.

Dated: December 17, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29934 Filed 12–22–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Agency Information Collection (Payment/Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities); Activities: Under OMB Review.

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 22, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0620 (Payment/Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0620 (Payment/Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities)'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

The collection of this information is necessary to comply with the provisions of PL 101–366 (Department of Veterans Affairs (VA) Nurse Pay Act of 1990) as amended by 106–419 (Veterans Benefits and Health Care Improvement Act of 2000), which specifically provides for a locality pay system for certain health care personnel within VA. Rates of pay are established by VA medical facility Directors based on rates of compensation for corresponding positions in the local labor market. The law requires that where available, data from the Bureau of Labor Statistics or other third party industry surveys will be used in determining the beginning rates of compensation. However, VA medical facility Directors may conduct a salary survey in an attempt to collect comparable survey data in order to implement and adjust rates for registered nurses, nurse anesthetists, and other health care personnel when other data sources are not available.

Titles Payment/Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities.

OMB Control Number: 2900–0620.

Type of Review: Revision.

Abstract 38 U.S.C. Chapter 17 authorizes VA to provide hospital care, medical services, domiciliary care and nursing home care to eligible veterans. Public Law 106–117 ''The Veterans Millennium Health Care and Benefits Act'' amended 38 U.S.C. by adding § 1725 establishing reimbursement authority for an individual who is an active Department health-care participant who is personally liable for emergency treatment furnished in a non-Department facility provided that the veteran fit the limitations outlined in the statute.

Affected Public: Private Sector.

Estimated Annual Burden: 115,298 burden hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 461,188

Dated: December 17, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29930 Filed 12–22–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0156]

Agency Information Collection (Notice of Change in Student Status): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the

collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before *January 22, 2015.*

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0156'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0156'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Notice of Change in Student Status, VA Form 22–1999b.

OMB Control Number: 2900–0156.

Type of Review: Revision of a currently approved collection.

Abstract: Educational institutions use VA Form 22–1999b to report a student's enrollment status. Benefits are not payable when a student interrupts or terminates a program. VA uses the information to determine a student's continued entitlement to educational benefits or if the benefits should be increased, decreased, or terminated.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 7, 2014, at page 60585.

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

Estimated Annual Burden: 91,086.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: 1 response per respondent annually.

Estimated Total Number of Responses Annually: 546,517.

Dated: December 18, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29993 Filed 12–22–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Agency Information Collection (Application for Assumption Approval and/or Release From Personal Liability to the Government on a Home Loan) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0110'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0110'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, VA Form 26–6381.

OMB Control Number: 2900–0110.

Type of Review: Revision of a currently approved collection.

Abstract: Veteran-borrows complete VA Form 26–6381 to sell their home by assumption rather than requiring the purchaser to obtain their own financing to pay off the VA guaranteed home loan. In order for the veteran-borrower to be release from personal liability, the loan must be current and the purchaser must assume all of the veteran's liability to the Government and to the mortgage holder and meet the credit and income requirements.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2014, at pages 59561–59562.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 42 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Dated: December 18, 2014.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29987 Filed 12–22–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Agency Information Collection (Monthly Certification of On-the-Job and Apprenticeship Training): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of

Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0178'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0178'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Monthly Certification of On-the-Job and Apprenticeship Training, VA Forms 22–6553d and 22–6553d–1.

OMB Control Number: 2900–0178.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants receiving on the job and apprenticeship training complete VA Form 22–6553d to report the number of hours worked. Schools or training establishments also complete the form to report whether the claimant's educational benefits are to be continued, unchanged or terminated, and the effective date of such action. VA Form 22–6553d–1 is an identical printed copy of VA Form 22–6553d. Claimants use VA Form 22–6553d–1 when the computer-generated version of VA Form 22–6553d is not available. VA uses the data collected to process a claimant's educational benefit claim.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 10, 2014, at page 61375.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,384 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 68,301.

Dated: December 18, 2014.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–30000 Filed 12–22–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Tuesday,

No. 246 December 23, 2014

Part II

Bureau of Consumer Financial Protection

12 CFR Parts 1005 and 1026

Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1005 and 1026

[Docket No. CFPB–2014–0031]

RIN 3170–AA22

Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation E, which implements the Electronic Fund Transfer Act (EFTA); Regulation Z, which implements the Truth in Lending Act (TILA); and the official interpretations to the regulations. The proposal would create comprehensive consumer protections for prepaid financial products. The proposal would expressly bring such products within the ambit of Regulation E as prepaid accounts and create new provisions specific to such accounts. The proposal would generally cover those prepaid accounts that are cards, codes, or other devices capable of being loaded with funds and usable at unaffiliated merchants or for person-to-person transfers, and are not gift cards (or certain other related types of cards). The proposal would modify Regulation E to establish disclosure requirements specific to prepaid accounts that would require financial institutions to provide certain disclosures to consumers prior to and after the acquisition of a prepaid account. The proposal would also include an option for an alternative to Regulation E's periodic statement requirement that would permit prepaid product providers to make available to consumers certain methods for access to account information in lieu of sending periodic statements. Additionally, the proposal would apply Regulation E's limited liability and error resolution provisions to prepaid accounts, with certain modifications, including applying these provisions after account registration. Moreover, the proposal would require prepaid account issuers to provide the Bureau with terms and conditions for prepaid accounts, which it would post on a Web site maintained by the Bureau. Relatedly, issuers would also be required to post the terms and conditions on their own Web sites or make them available upon request. Finally, the proposal would also contain amendments to Regulations Z and E to regulate prepaid accounts with overdraft services or credit features. Among other things, prepaid cards that access overdraft services or credit features for a fee would generally be credit cards subject to Regulation Z and its credit card rules. Moreover, the proposal would require that consumers consent to overdraft services or credit features and give them at least 21 days to repay the debt incurred in connection with using such services or features. Further, Regulation E would be amended to include disclosures about overdraft services or credit features that could be linked to prepaid accounts. The compulsory use provision under Regulation E would also be amended so that prepaid account issuers would be prohibited from requiring consumers to set up preauthorized electronic fund transfers to repay credit extended through an overdraft service or credit feature.

DATES: Comments must be received on or before March 23, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2014–0031 or RIN 3170–AA22, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2014–0031 and/or RIN 3170–AA22 in the subject line of the email.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Kristine Andreassen, Morgan Harper, and Jane Raso, Counsels; Krista Ayoub, Joseph Baressi, and Eric Goldberg, Senior Counsels, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Bureau of Consumer Financial Protection (Bureau) is issuing this notice to propose comprehensive consumer protections for prepaid financial products (or prepaid products). Such products are among the fastest growing types of payment instruments in the United States. However, with certain limited exceptions, prepaid products have not been subject to the existing Federal consumer regulatory regimes that provide consumer disclosures, error resolution and protection from unauthorized transfers. *See generally* 12 CFR part 1005.

The Bureau is proposing to establish a new definition of ''prepaid account'' within Regulation E and adopt comprehensive consumer protection rules for such accounts. The proposal would extend Regulation E protections to prepaid products that are cards, codes, or other devices capable of being loaded with funds, not otherwise accounts under Regulation E and redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at either automated teller machines or for person-to-person (P2P) transfers; and are not gift cards (or certain other types of limited purpose cards), by bringing these products under the proposed definition of ''prepaid account.''

The Bureau is also proposing to modify Regulation E, as it would pertain to prepaid accounts, in several key respects. First, the Bureau proposes to require financial institutions to make certain disclosures available to consumers before a consumer agrees to acquire a prepaid account. These disclosures would take two forms, whether provided in oral, written, or electronic form. The first would be a short form highlighting key fees that the Bureau believes are most important for consumers to know about prior to acquisition. The second would be a long form that would set forth all of the prepaid account's fees and the conditions under which those fees could be imposed. When certain

conditions are met, the proposed rule would provide an exception for financial institutions that offer prepaid cards for sale over the phone or in retail stores that would allow such institutions to provide consumers with access to the long form disclosure by telephone or internet, but otherwise not make the long form available until a consumer has acquired the prepaid account. To facilitate compliance, the Bureau is additionally proposing model forms and sample forms. The use of the model forms would establish a safe harbor for compliance with the short form disclosure requirement. The Bureau is also proposing revisions to existing Regulation E model forms and model clauses to provide model language.

In addition, with certain modifications, the Bureau is proposing to extend to all prepaid accounts the existing Regulation E requirements regarding the provision of transaction information to accountholders that currently apply to payroll card accounts, Federal government benefit accounts, and non-needs tested State and local government benefit accounts. These provisions would allow financial institutions to either provide periodic statements or, alternatively, make available to the consumer: (1) The account balance, through a readily-available telephone line; (2) an electronic history of account transactions that covers at least 18 months; and (3) a written history of account transactions that covers at least 18 months upon request. For all prepaid accounts, the Bureau proposes to require financial institutions to disclose monthly and annual summary totals of all fees imposed on a prepaid account, as well as the total amount of all deposits to and debits from a prepaid account when providing a periodic statement or electronic or written account history.

Further, the Bureau is proposing to modify Regulation E to adopt error resolution and limited liability provisions specific to prepaid accounts. Currently, Regulation E limits consumers' liability for unauthorized transfers, provided that the consumer gives timely notice to the financial institution, and requires financial institutions to resolve certain errors in covered accounts. The Bureau proposes to extend this regime to prepaid accounts, with modification to the timing requirements for reporting unauthorized transfers and errors when a financial institution follows the periodic statement alternative described above. The Bureau is also proposing not to apply the limited liability and error resolution requirements of Regulation E to unregistered prepaid accounts. Moreover, the proposed rule would include provisions that would require prepaid account issuers to post prepaid account agreements on the issuers' Web sites (or make them available upon request in limited circumstances) and to submit those agreements to the Bureau for posting on a Web site maintained by the Bureau.

The Bureau is also proposing to revise various other provisions in subparts A and B of Regulation E. With respect to subpart A, the proposed amendments include a revision that would provide that, similar to payroll card accounts, a consumer cannot be required to establish an account for receipt of government benefit. Additionally, the Bureau proposes to revise official interpretations to Regulation E to incorporate a preemption determination the Bureau made regarding certain State laws related to unclaimed gift cards. With respect to subpart B, which applies to remittance transfers, the Bureau proposes a conforming change to the official interpretations.

Overdraft Services and Credit Features

The Bureau is also proposing to modify Regulations Z and E to address the treatment of overdraft services and other credit features offered in connection with prepaid accounts.

Regulation Z. The Bureau is proposing changes to Regulation Z so that prepaid account issuers that offer overdraft services or other credit features in connection with such accounts and charge a fee for the service (such as interest, transaction fees, annual fees, or other participation fees) generally would be subject to Regulation Z's credit card rules and disclosure requirements for open-end (not home-secured) consumer credit plans. In addition, the Bureau proposes to revise Regulation Z so that its credit card rules would apply to separate lines of credit linked to prepaid accounts. The proposal would also require an issuer to obtain a consumer's consent before adding overdraft services and credit features to a prepaid account and would prohibit the issuer from adding such features until at least 30 calendar days after a consumer registers the prepaid account. Moreover, the proposal would amend Regulation Z as it pertains to credit on prepaid accounts to provide that a consumer would receive a periodic statement not more often than once per month and then have at least 21 days to repay the debt the consumer incurred in connection with using the overdraft service or credit feature. The proposal would also prevent an issuer from requiring, as terms of the credit feature, that it could immediately take incoming payments to a prepaid account, such as cash loads or direct deposits, to repay and replenish the credit line.

Regulation E. The Bureau is proposing to revise Regulation E to include disclosures about overdraft services or credit features that could be linked to prepaid accounts in the short and long form disclosures. The Bureau is also proposing to provide that the compulsory use provision would apply to overdraft services or other credit features linked to prepaid accounts. As proposed, prepaid account issuers would be prohibited from requiring consumers to set up preauthorized electronic fund transfers to repay credit extended through an overdraft service or credit feature. Lastly, the Bureau proposes to amend Regulation E to restrict issuers from applying to a consumer's prepaid account different terms and conditions such as charging different fees for accessing funds in a prepaid account, depending on whether the consumer elects to link the prepaid account to an overdraft service or credit feature.

Effective Date

The Bureau proposes that with certain exceptions, the effective date for the requirements set forth in a final rule would be nine months after the final rule is published in the **Federal Register**. The exception proposed herein is that for a period of 12 months after the final rule is published in the **Federal Register**, financial institutions would be permitted to continue selling prepaid accounts that do not comply with the final rule's pre-acquisition disclosure requirements, if the account and its packaging material were printed prior to the proposed effective date.

II. Background

A. Prepaid Financial Products

As noted above, prepaid products—in various forms—are among the fastest growing types of payment instruments in the United States. A 2013 study by the Board of Governors of the Federal Reserve System (the Board) reported that compared with noncash payments such as credit, debit, automated clearing house (ACH), and check, prepaid card payments increased at the fastest rate from 2009 to 2012.[1] Among other

[1] Fed. Reserve Sys., *The 2013 Federal Reserve Payments Study, Recent and Long-Term Payment Trends in the United States: 2003–2012, Detailed Report and Updated Data Release* (2014), *available at https://.frbservices.org/files/communications/*

Continued

things, the report found that the number of prepaid card payments reached 9.2 billion transactions in 2012 (up from 5.9 billion in 2009).[2]

There is significant variation among prepaid products. For example, some prepaid products are ''reloadable,'' meaning that a consumer or other authorized party can add funds to the account after the account is issued, while others are not. Additionally, some prepaid products, such as certain gift cards, are ''closed-loop,'' meaning that a consumer can only use the product at a specific merchant or group of merchants. Regulation E currently regulates closed-loop gift cards and similar products. *See* § 1005.20. Other prepaid products are ''open-loop.'' Like gift cards, these products are used to store funds. However, unlike closed-loop prepaid products, they can be used on payment and automated teller machine (ATM) networks.[3]

Consumers may acquire prepaid products in a variety of ways. Prepaid products may be sold directly to consumers in retail locations, over the telephone, or online. They may also be provided at no charge through an entity that uses the prepaid product to distribute funds to a recipient, such as an employer that distributes wages to an employee on a payroll card. Further, as discussed in greater detail below, prepaid products may not be tied to a physical card or device, and instead may be accessible and usable online or at a physical location through a mobile device such as a smartphone.

Typically, consumers may not spend more than the total amount of funds loaded onto a prepaid product, although some products permit consumers to access additional funds for a fee in a manner similar to overdraft services or credit features offered with checking accounts. As discussed below, a ''general purpose reloadable'' (GPR) card is one type of reloadable, open-loop prepaid product. Others include prepaid products onto which third parties distribute funds, also as discussed in greater detail below. These include payroll cards and cards for the disbursement of student loan proceeds or insurance proceeds, and cards used to disburse Federal and non-needs based State and local government benefits.[4]

GPR Cards

A GPR card is one of the most common and widely-available forms of open-loop, reloadable prepaid products. A financial institution generally issues a GPR card for an amount paid to load the card by a consumer less the purchase price of the card, if any. A GPR card can be reloaded by the consumer, meaning that once the card is registered, the consumer can add funds to the card. Based on the Bureau's research, it understands that currently, the top five GPR card programs (as measured by load volume) identified by the Aite Group have maximum load amounts generally ranging from approximately $2,500 to $15,000, with some exceptions made for large tax refunds. The prevalence of GPR cards has grown rapidly. According to projections by the Mercator Advisory Group, the amount loaded onto GPR cards grew from less than $1 billion in 2003 to nearly $65 billion in 2012. This makes GPR cards among the fastest-growing forms of prepaid products over that decade, growing from less than 8 percent of prepaid load to over 36 percent during that same period. The growth rate has continued. According to Mercator's projections, the total dollar value loaded onto GPR cards is expected to continue to grow to over $98 billion in 2014.[5]

Virtual GPR cards. As noted above, prepaid products may not be tied to a physical card or device, and instead may be accessible and usable online or at a physical location through a mobile device such as a smartphone. The Bureau understands that the use of GPR prepaid products not linked to a physical card or device to store and transfer funds via the internet, text, or mobile phone application is growing. To use these ''virtual GPR cards'' (''virtual'' because these accounts are not linked to a physical card or device), consumers may receive account information such as the account number that they can then use to make purchases.

GPR Card Functionality

As noted above, consumers generally purchase GPR cards at retail locations, over the telephone, or online. When buying a GPR card at a retail location, consumers typically pay an upfront purchase fee. Program managers may waive this fee for GPR cards that consumers purchase online. A newly-purchased GPR card is usually loaded by the retailer at the time of purchase with funds provided by the consumer. However, in order to take advantage of all of the GPR card's features, consumers are often required to contact the GPR card's program manager and register the card, or at least to activate it. Indeed, the Bureau understands that it is common that unless a consumer registers the consumer's newly-purchased GPR card, the consumer only has a ''temporary card,'' because program managers do not send a ''permanent card'' embossed with the consumer's name until the consumer registers the card. Further, the Bureau understands that unless a GPR card is registered, there is typically a cap on the amount of funds a consumer can load onto the card and restrictions on the consumer's use of the card (*e.g.,* the consumer might not be able to use the card at ATMs or reload funds onto the card).

Registration typically requires the consumer to provide specific identifying information (*i.e.,* full name, domestic residential address, date of birth, and a Social Security Number or Taxpayer Identification Number, or, in some instances, another government-issued identification number). The information is used by the program manager or issuing bank to verify the consumer's identity. If the consumer's identity cannot be verified, the card is not considered registered. As noted above, customers with unregistered GPR cards are generally able to spend their initial load but will not be able to reload the card or use it at an ATM. Activation may require a consumer to provide less identifying information than registration.

GPR cards can generally be reloaded through direct deposit of wages, pensions, or government benefits; a cash purchase of a reload product; direct cash reload; transfer from another prepaid product or a deposit account; or deposit of a check at a participating check-cashing outlet or via remote deposit capture.[6] Consumers can typically obtain cash from their prepaid products via ATM withdrawals, bank teller transactions, or by electing to obtain cash back on a personal identification number (PIN) transaction at a merchant. Additionally, consumers can typically make purchases with their GPR cards wherever the payment network brand appearing on the card is accepted. A number of programs also offer an online bill pay function, which sometimes has a fee associated with it. Consumers can typically obtain updates

pdf/general/2013_fed_res_paymt_study_detailed_rpt.pdf.

[2] *Id.* at 37.

[3] Payment networks include Visa, MasterCard, American Express, and Discover; ATM networks include NYCE, PULSE, STAR and Cirrus.

[4] As described in more detail below, payroll card accounts and cards used to distribute certain government benefit payments are currently regulated by Regulation E.

[5] Mercator Advisory Grp., *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014–2017* at 13 (Nov. 2014).

[6] The Bureau understands that in limited circumstances, a consumer can reload a GPR card via paper check.

regarding their GPR card's account balance (and, for some programs, recent transaction activity) via toll-free telephone calls, text messages, email alerts, the card program's Web site, or written account histories. Some GPR card providers charge consumers to speak to a customer service agent or to receive a written copy of their account history. Consumers may incur fees to obtain balance information at an ATM.

In fact, the Bureau understands that GPR cards can vary substantially with respect to the fees and charges assessed to consumers, both in terms of their total volume as well as in the number and type of fees assessed. Based on its review of the 2012 FRB Philadelphia Study, the Bureau believes average cardholder costs for GPR and payroll cards range from approximately $7.00 to $11.00 per month, depending on the type and distribution channel of the account.[7] In a 2014 paper, the Pew Charitable Trusts estimated that the median consumer using one of the 66 major GPR cards it examined would be charged approximately $10.00 to $30.00 every month for use of the cards, on average, depending on the consumer's understanding of the card's fee structure and ability to alter behavior to avoid fees.[8] The 2012 FRB Philadelphia Study also found that in terms of total value, maintenance and ATM withdrawal fees are among the most significant fees incurred by users of open-loop prepaid products.[9]

Consumers' Use of GPR Cards

The 2012 FRB Philadelphia Study found that most of the prepaid products in its study are used for both cash withdrawals and purchases of goods and services. In particular, it found that depending on the product, cash withdrawals account for about one-third to one-half of the value taken off the product. The study also reported that it believed that prepaid cards are used primarily to purchase nondurable goods and noted that many of the products studied are also used to pay bills.[10]

Further, as discussed in greater detail below, both the type of consumers who use GPR cards and the reasons for which they use them vary. Although it has been reported that the majority of users of open-loop prepaid products have had checking accounts at some point and that most users also have experience using credit cards,[11] it also has been observed that for some consumers, the lack of access to checking accounts and other types of more established financial products and services such as credit cards appear to be the key driver of their use of GPR cards.[12] The 2014 Pew Survey found that 58 percent of consumers that use prepaid products are currently without checking accounts, but indicated they want to have a checking account in the future.[13] The survey also found that 26 percent of prepaid product users without checking accounts indicated that they use prepaid products because, among other reasons, they would not be approved for a checking account.[14]

When consumers open a checking or savings account, they must satisfy the depository institution or credit union's customer identification program (CIP) obligations, which is part of the institution's Bank Secrecy Act (BSA) and anti-money laundering compliance program.[15] In addition, banks and credit unions generally review information about prospective customers obtained from specialized reporting agencies that can reveal prior history of involuntary account closure, unsatisfied balances, and other issues with prior checking account use.

Customer identification and verification procedures (other than those related to credit or similar inquiries) are largely identical between checking and GPR accounts. First, the customer identification and verification requirements for providers and sellers of prepaid access issued by the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Treasury Department (Treasury), are largely similar to the CIP requirements for depository institutions and credit unions. Second, the Bureau understands that for most prepaid products, the issuer (*i.e.,* the depository institution or credit union providing access to the networks and holding the funds) sets the minimum standards for the CIP.[16] However, there are differences. The primary difference is usually with respect to the method of customer verification. Checking and savings accounts are more frequently opened in person at a financial institution's branch location (and thus use ''documentary'' forms of identification, such as a driver's license or passport, to verify identity). Prepaid products, however, even those purchased at retail locations, are usually registered via telephone or online (and thus use ''non-documentary'' forms of verification such as using information obtained from consumer reporting agencies).

When consumers apply for credit cards, a card issuer will generally rely on a rigorous process to determine whether an applicant is an appropriate credit risk. In contrast, most GPR cards do not contain similar requirements. The 2014 Pew Survey found that 33 percent of monthly users of open-loop prepaid products have never had a credit card.[17] GPR cards may also be more accessible to consumers than debit cards that require the cardholder to have opened a traditional transactional account such as a checking account as a prerequisite. The 2014 Pew Survey found that 41 percent of monthly users of open-loop prepaid products currently do not have a checking account.[18] Similarly, a 2013 survey by the Federal Deposit Insurance Commission (FDIC) found that of those people whom it surveyed, approximately 33 percent of those who reported using a prepaid card in the 30 days prior to being surveyed were unbanked.[19] Additionally, debit card issuers may evaluate potential customers for credit risk more closely than prepaid card issuers. The Bureau understands that debit card issuers often provide faster fund availability than prepaid card issuers and thus may bear

[7] Stephanie Wilshusen et al., Fed. Reserve Bank of Phila., *Consumers' Use of Prepaid Cards: A Transaction-Based Analysis,* at 39 (2012) (2012 FRB Philadelphia Study), *available at http://www.philadelphiafed.org/consumer-credit-and-payments/payment-cards-center/publications/discussion-papers/2012/D-2012-August-Prepaid.pdf.* The authors of the report noted that the report's primary focus is on GPR cards and payroll cards, which will be discussed in greater detail below.

[8] The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards,* at 39 (Feb. 2014) (2014 Pew Study), *available at http://www.pewtrusts.org/en/research-and-analysis/reports/2014/02/06/consumers-continue-to-load-up-on-prepaid-cards.*

[9] 2012 FRB Philadelphia Study, at 6.

[10] *Id.*

[11] The Pew Charitable Trusts, *Why Americans Use Prepaid Cards: A Survey of Cardholders' Motivations and Views,* at 7 (Feb. 2014) (2014 Pew Survey). It appears that the prepaid products discussed in the report included GPR cards, payroll cards, and government benefit cards. The study excluded closed-loop prepaid products.

[12] 2014 Pew Survey, at 7–8, 11.

[13] *Id.* at 10–11.

[14] *Id.* at 14.

[15] *See e.g.,* Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering InfoBase, *http://www.ffiec.gov/bsa_aml_infobase/pages_manual/olm_011.htm.*

[16] Mercator Advisory Grp., *Customer Identification Programs in Prepaid: Best Practices,* at 2 (July 2013).

[17] *See* 2014 Pew Survey, at 7. The Bureau recognizes that this figure may include consumers that have never tried opening a credit card account, as well as those that tried to open a credit card account, but had their application denied.

[18] *Id.*

[19] *See also* Fed. Deposit Ins. Corp., *Appendix to 2013 FDIC National Survey of Unbanked and Underbanked Households* (Oct. 2014) (2013 FDIC Survey), at 46, *available at https://www.fdic.gov/householdsurvey/report.pdf.*

greater depositor credit risk such as the risk that a deposited check never clears.

The 2013 FDIC Survey also suggests that unbanked and underbanked consumers are more likely than the general population to use open-loop prepaid products such as GPR cards. It found that there are approximately 30 million unbanked and underbanked households in the United States.[20] It also found that these households tend to be disproportionate users of GPR cards and payroll cards. It observed that 19.7 percent of underbanked and 27.1 percent of unbanked households, as well as 33 percent of previously banked households, reported having used such cards (compared with 12 percent reported use in the entire population).[21] The FDIC also found that while usage among all households remained relatively stable since 2009, the proportion of unbanked households that had used a prepaid card increased from 12.2 percent in 2009 to 17.8 percent in 2011 and 27.1% in 2013.[22] In addition to the lack of access to traditional financial products and services as a shared characteristic of some of the consumers that use GPR cards, the FDIC study shows that prepaid card users were more likely than the general population to be young, single mothers, disabled, or have sub-$50,000 incomes, and less likely to be homeowners, white, have college degrees, or be employed.[23]

Further, the 2014 Pew Survey noted that the desire to avoid fee-based overdraft services associated with checking accounts appear to motivate some consumers to choose open-loop prepaid products over checking accounts. Indeed, the survey concluded that 41 percent of users have closed or lost a checking account due to overdraft fees.[24] Checking accounts can become costly. For instance, Bureau staff has determined that the median checking account overdraft fee charged as of July 2014 among the largest fifty U.S. depository institutions ranked by consumer checking balances is $35 per item.[25] By contrast, except for a few exceptions discussed below, GPR cards are generally not offered with an overdraft service nor other credit features.[26] Moreover, GPR card providers that offer such services or features charge lower fees than the fees depository institutions or credit unions charge for checking account overdraft.[27] Thus, for consumers who do not want to, or cannot open a checking account, the Bureau believes that a GPR card could be a viable substitute. Indeed, the Bureau observes that many GPR cards are advertised as a ''safe'' or ''secure'' alternative to a checking account.[28]

Consumers with access to traditional financial products and services use GPR cards as well.[29] The Bureau understands that one of the ways in which many consumers use such cards is for a limited purpose such as while traveling or making online purchases, because they may believe that using prepaid cards is safer than using cash, a credit card, or a debit card in those situations.[30] These consumers may not ever register and reload the card. Instead, they may let the card become dormant or discard it after spending down the initial balance, and then purchase another GPR card at a later date if new needs arise. The Bureau understands that another popular way in which consumers use GPR cards is as a budgeting tool. For example, a family might budget a fixed amount each month for dining out and put that money on a GPR card, or parents may provide a GPR card to a child at college to control the child's spending.

Further, based on the Bureau's market research and analysis, the Bureau believes that additional consumers will continue to adopt GPR cards. It also believes that consumers that currently use GPR cards may increasingly find that they no longer want to have traditional financial products and services such as a checking account or a credit card in addition to their GPR card. The Bureau notes that GPR card functionality has been expanding. For example, some GPR card programs have started to offer checking account-like features such as check-writing using pre-authorized checks, the ability to send direct deposits via an ACH to the GPR card, and, in some limited cases, the ability of third parties to debit and credit the GPR card account via ACH (*e.g.,* crediting the card account through direct deposit). Additionally, many GPR card programs have offered consumers ways to access their account online, including through mobile devices such as smartphones. For example, oftentimes consumers can use mobile phone applications to closely monitor their GPR card transactions, balances, and fees; to load funds to their GPR cards; and to transfer funds between accounts. Lastly, like credit and debit cards, GPR cards provide access to payment networks. Consumers may find this to be an important feature of GPR cards in that some merchants may only accept payment through a card that provides access to one of these networks.

Marketing and Sale of GPR Cards

In recent years, the GPR card segment has grown increasingly competitive, which has resulted in a decrease in prices, coupled with an increase in transparency for many products.[31] Nevertheless, GPR card providers market the cards in ways that may negatively affect consumers' ability to make meaningful comparisons.[32] Card packaging is often limited in size. Because many of them are designed to be sold in retail stores, the card package, also known as a J-hook package, is no larger than 4 inches by 5.25 inches.[33] Thus, card packages have limited space in which to explain their product and disclose key features. It has also been reported that fee information for prepaid products is sometimes hard to find and difficult to understand, thus making comparison shopping challenging.[34]

[20] 2013 FDIC Survey, at 4.

[21] 2013 FDIC Survey, at 35–36.

[22] 2013 FDIC Survey, at 29.

[23] 2013 FDIC Survey appendix, at 46–47.

[24] 2014 Pew Survey, at 8; *see also id.* at 13–14 (explaining that 46 percent of respondents indicated that one of the major reasons they use prepaid cards is to ''Avoid overdraft fees;'' 51 percent of respondents said one of their major reasons is ''Helping you not spend more money than you actually have'').

[25] Nearly all depository institutions the Bureau considered assess overdraft fees on a per-item basis. Among those that do, both the median and modal lowest-tier overdraft fee is $35. Some depository institutions have higher overdraft fees that apply after a certain number of overdraft occurrences. However, the Bureau's analysis considers only the lowest-tier fees a consumer would encounter if de minimis or other policies do not preclude a fee. For depository institutions that charge different amounts in different regions, Bureau staff considered pricing for the region where the depository institution is headquartered.

[26] *See, e.g.,* 2014 Pew Study, at 4, 9–10.

[27] *Id.*

[28] *See, e.g.,* NBCPA Web site, *What are Prepaid Cards, http://www.nbpca.com/en/What-Are-Prepaid-Cards/Prepaid-Card-Benefits.aspx* (''[With prepaid cards] . . . [avoid] the risk of over-spending or overdraft, thus avoiding the interest, fees and potential negative credit score implications of traditional credit cards. [For parents], prepaid cards [help] maintain control over [children's spending].'')

[29] 2014 Pew Survey, at 7 (59 percent of prepaid card users also have a checking account.)

[30] *See, e.g.,* 2014 Pew Survey, at 1, 13.

[31] *See, e.g.,* Fed. Reserve Bank of St. Louis, *Cards, Cards and More Cards: The Evolution to Prepaid Cards,* Inside the Vault, Fall 2011, at 1, 2, *available at http://www.stlouisfed.org/publications/itv/articles/?id=2168* (''Competition among prepaid card issuers and increased volume have helped lower card fees and simplify card terms''); 2014 Pew Study, at 2 (''[O]ur research finds that the providers are competing for business by lowering some fees and are facing pressure from new entrants in the market'').

[32] 2014 Pew Survey, at 5, 6.

[33] A j-hook is a looped hook used by retailers to hang prepaid cards (and other products). Retailers often sell prepaid cards on j-hooks in a standalone display rack at the end of an aisle in a store.

[34] *See, e.g.,* Consumer Reports, *Prepaid Cards: How They Rate on Value, Convenience, Safety and*

However, the Bureau believes that consumers benefit from comparison shopping. For example, the 2012 FRB Philadelphia Study found that total cardholder costs vary by the type of open-loop prepaid product. [35]

In addition to the size limitations to GPR card packaging related to the fact that many GPR cards are sold through the retail channel on J-hooks, certain aspects of purchasing GPR cards in retail settings may pose additional issues. For instance, some retail locations may only offer one or a handful of products. Retailers may not always have a broad selection of GPR cards that consumers can compare while in a particular store, because prepaid card providers can establish exclusive marketing arrangements that may prevent competitors' cards from being sold in the same store.[36] The Bureau acknowledges that the lack of choice is not necessarily unique to GPR cards sold in certain retail locations. For example, any one bank or credit union may only offer a limited range of transactional accounts. Further, in some stores, prepaid products including GPR cards may be displayed behind a register, requiring a consumer to ask to see each product packaging individually. The Bureau believes that this process likely makes comparison-shopping more time-consuming, even when choice among products exists. Lastly, in a retail setting, GPR cards may be displayed near closed-loop prepaid products such as gift cards. This could contribute to consumer confusion. For the above reasons, the Bureau believes that a consumer looking to comparison shop among different GPR cards in a retail setting may incur high search costs.

Additionally, in a retail setting, consumers desiring to purchase GPR cards may only allot limited time to consider their purchases. The Bureau believes that consumers often purchase a GPR card while purchasing groceries and convenience items, and may not take the time to fully review and comprehend the terms of the card that they are acquiring. Moreover, the selling of GPR cards in convenience and other retail stores that do not otherwise sell financial products (as opposed to, for example, at a bank) may not be conducive to helping a consumer understand the terms and conditions of the GPR card or that the consumer may be starting a long-term financial relationship that could entail significant expense for the consumers. For example, the Bureau believes that a salesperson at a convenience store where a GPR card is sold may not be able to provide adequate information to a consumer about the product. In contrast, the Bureau expects that an employee at a bank or credit union would be better informed.

Further, once a consumer can review the full terms and conditions of a GPR card, the consumer has typically already purchased the card and loaded funds onto it, making returns difficult or impossible due to the inability of the retail store to refund the cash loaded onto a prepaid product including a GPR card. During outreach, several prepaid product providers have informed the Bureau that they provide refunds related to the purchase of a prepaid card, but the Bureau believes that few consumers realize that this is an option. The Bureau acknowledges that consumers who determine they do not want to establish a long term relationship with the GPR prepaid card they purchased may also end the relationship more easily (as compared to closing a checking or credit card account). Such consumers could spend down the funds initially loaded onto the card and then discard it. However, the Bureau believes that the consumer could still incur fees such as monthly maintenance fees for using the GPR card.

Structure of Typical GPR Card Programs

GPR card products are generally provided by combinations of entities working together rather than by a single, vertically-integrated entity operating all aspects of the program. In fact, the Bureau understands that the typical GPR card supply chain involves more parties than the supply chains for traditional checking or savings accounts or for credit cards. Although a consumer may only interact with a single entity or limited number of entities involved in the supply chain such as those entities whose logos are displayed on the GPR card or its packaging, the Bureau believes that the fact that many different entities can be involved in the supply chain could expose consumers as well as the entities themselves to greater risks such as potential losses resulting from the insolvency or malfeasance of other entities involved in the supply chain, when compared to the risks associated with a traditional checking or savings account. The Bureau discussed the various entities that may be involved in a typical GPR card program below.

Entities involved in a typical GPR card program. First, entities known in the industry as program managers may design, manage, market, and generally operate GPR card programs. Program managers may include depository institutions and credit unions, but are typically non-depository entities. Program managers typically establish or negotiate a GPR card program's terms and conditions, market the card, assume most of the financial risks associated with the program, and reap the bulk of the revenue from the program.[37] The program manager is also, in most cases, the primary consumer-facing party in connection with a GPR card, because it is typically the program manager's brand on the card as well as its packaging.[38] While a handful of program managers appear to have had a large majority of the market share as recently as 2012, the Bureau notes that the GPR card industry is fast-changing. Indeed, it appears that new entrants—both start-ups and established financial institutions—have led to both increased competition and growth in the market over just the last few years.[39]

Program managers typically contract with various third-party service providers for various tasks. One of the most important entities involved in GPR card program is the prepaid card issuer, which is typically either a depository institution or credit union. Virtually all GPR cards must be issued by depository institutions or credit unions that are authorized by the retail electronic payment card networks. Issuers may manage the accounts that hold funds loaded onto the cards. Some depository institutions and credit unions are actively involved in the GPR cards they issue by serving as both issuer and program manager for their own programs. Other depository institutions may only act as an issuer and provide sponsorship into specific payment networks, but may work closely with the entity that is the program manager for a specific GPR card program to design, market and administer the

Fee Accessibility and Clarity, (July 2013), at 24, *available at http://www.consumerfinance.gov/blog/prepaid-cards-help-design-a-new-disclosure/.*

[35] 2012 FRB Study, at 6, 39, 72; Fumiko Hayashi & Emily Cuddy, *General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees and Fraud Risks,* at 33–35 (Fed. Reserve Bank of Kansas City, Working Paper No. RWP 14–01, 2014) (Kansas City Fed Study), *available at https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14-01.pdf.*

[36] For example, earlier this year Blackhawk Network Holdings, Inc. extended its exclusive distribution arrangement with Safeway Inc. through 2019. *See* Press Release, Blackhawk Network, *Safeway and Blackhawk extend exclusive prepaid card distribution agreement through 2019* (Mar. 7, 2014), *available at http://.com/blackhawk-comments-on-parent-company-safeways-spin-off-announcement/.*

[37] *See* Kansas City Fed Study, at 6.

[38] *See* Aite Grp. LLC, *Prepaid Debit Card Realities: Cardholder Demographics and Revenue Models,* at 17 (Nov. 2013).

[39] *Id.*

program. In sum, the particular services that issuers provide and their degree of involvement in any GPR card program may vary.[40] The Bureau understands that variations can be due to the extent to which the program manager performs particular services by itself, as well as due to the particular features of a specific GPR card program.

To produce, market and sell GPR cards, program managers work with, as applicable, manufacturers and distributors. The Bureau understands that distributors arrange for GPR cards to be sold through various channels including through retailers, money transfer agents, tax preparers, check cashers, and payday lenders. Further, in many cases, the Bureau understands that third-party processors may provide many of the back-office processing functions associated with initial account opening (including those related to transitioning from temporary to permanent cards), transaction processing, and account reporting. Lastly, the payment networks themselves also establish and enforce their own rules and security standards related to payment cards generally and prepaid products such as GPR cards specifically. The networks also facilitate card acceptance, routing, processing, and settling of transactions between merchants and card issuers.

How funds are held. In contrast to a traditional checking or savings account, prepaid products including GPR cards are unique in that the underlying funds are typically held in a pooled account at a depository institution or credit union. This means that rather than establish individual accounts for each cardholder, a program manager may establish a single account at a depository institution or credit union in its own name, but typically title the account to indicate that it is held for the benefit of each individual underlying cardholder. The Bureau understands that the program manager, sometimes in conjunction with the issuing depository institution or credit union or the depository institution or credit union holding the funds, will typically establish policies and procedures and put in place systems to demarcate each cardholder's funds within the pooled account. As discussed in detail below, these pooled accounts may qualify for, as applicable, FDIC pass-through deposit insurance or National Credit Union Administration's (NCUA) Share Insurance Fund (NCUSIF) pass-through share insurance. Whether the accounts in fact qualify depends on how the account is structured and whether certain other conditions are met. Also discussed in greater detail below, both the FDIC and NCUA have special rules, regarding how pool accounts may qualify for, as applicable, FDIC or NCUSIF pass-through insurance.

Revenue generation. The Bureau understands that GPR cards typically generate revenue through an up-front purchase price paid by the consumer, the assessment of various monthly maintenance and transactional fees, and interchange fees collected from merchants by the payment networks. The 2012 FRB Philadelphia Study found that ''while not as important as cardholder fees, interchange revenues (fees paid by a merchant or acquiring bank for the purpose of compensating an issuer for its involvement in an electronic prepaid, debit, or credit card transaction) account for more than one-fifth of the issuer revenues in the general-purpose programs and almost half of revenues in the payroll programs.''[41] Revenue is shared among some or all of the entities involved in the GPR card supply chain, although as also discussed above, program managers generally reap the bulk of the revenue from GPR card programs. Further, the Bureau notes that publicly-available details of how revenue is distributed and expenses are accounted for are sparse. Additionally, the Bureau believes that the distribution of revenue and the sharing of expenses among the entities involved the GPR card supply chain likely vary across programs.

Prepaid Products Loaded by Third Parties

The Bureau understands that consumers also receive network-branded open-loop prepaid products from third parties that disburse funds to consumers by loading the funds onto such accounts. Previously, funds may have been distributed to the consumer via paper check, direct deposit into a traditional checking or saving account, or cash. Payroll cards are the most common example of prepaid products used by third parties to distribute funds to consumers. In 2013, over five million payroll cards were issued, and $30.6 billion was loaded onto them.[42] The Bureau understands that an employer may establish payroll cards for its employees, directly or indirectly, for the express purpose of delivering on an ongoing basis, recurring payments of an employee's wages, salary, or other compensation, and an employee may choose having his compensation distributed via a payroll card over other options for receiving compensation.

If an employee chooses a payroll card, the Bureau understands that the employer will provide the employee with a network-branded prepaid card that accesses a subaccount assigned to the individual employee. Moreover, on each payday, the employer will transfer the employee's compensation to the payroll card account, instead of providing the employee with a paper check or making a direct deposit of funds to the employee's checking or savings account. The employee can use the payroll card to withdraw funds at an ATM or over-the-counter via a bank teller. The employee can also use the payroll card to make purchases online and at physical retail locations. An employee may even be able to obtain cash back at the point-of-sale (POS). Some payroll cards may offer features such as convenience checks and electronic bill payment. The Bureau understands that employers market payroll cards as an effective means for employees who may lack a traditional banking relationship to receive wages. Indeed, the Bureau believe that payroll cards may provide some consumers a more suitable, cheaper, and safer method of receiving their wages, as compared to other methods, such as receiving a check and going to a check-cashing store, if the consumer does not have a checking account.

Within the last ten years, however, there have been increasing concerns raised about payroll cards, with specific focus on potentially harmful fees and practices associated with payroll cards. As explained in greater detail below, the Board extended a modified form of Regulation E coverage to payroll cards in 2006, but did not extend these rules to GPR cards and other prepaid products. Among the relevant provisions of Regulation E that apply to payroll cards is the provision on compulsory use. Pursuant to this provision, no financial institution or other person can mandate that a consumer receive an electronic fund transfer into an account at a particular institution as a condition of employment. 12 CFR 1005.10(e)(2).

The Bureau issued a guidance bulletin in September 2013 to clarify the application of § 1005.10(e)(2) to payroll

[40] In some cases, a white label model is used whereby banks and credit unions rely upon another institution to issue prepaid accounts, which may be branded with the bank or credit union's name. There are a handful of such programs through which banks and credit unions, including some that are small, offer prepaid accounts (typically as a convenience to their customers or members).

[41] 2012 FRB Philadelphia Study, at 6.

[42] Mercator Advisory Grp., *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014–2017,* at 32 (Nov. 2014).

card accounts.[43] The bulletin reminded employers that they cannot require their employees to receive wages on a payroll card. It also explained some of the Regulation E protections that apply to payroll card accounts, such as those pertaining to fee disclosure, access to account history, limited liability for unauthorized use, and error resolution rights. Since the Bureau issued the bulletin, it understands that certain industry stakeholders have worked to develop industry standards incorporating and building upon the guidance given in it.[44] Nevertheless, the Bureau believes that concerns persist as to whether and how employers and financial institutions are complying with the compulsory use provision and other provisions of Regulation E, as well as related State laws applicable to the distribution of wages.[45] For example, employees may not always be aware of the ways in which they may receive their wages, because States may have differing and evolving requirements.[46]

The Bureau additionally believes that payroll card accounts raise disclosure issues beyond those addressed by its payroll card accounts guidance bulletin, discussed above. Employers may offer a payroll card account when an employee starts employment, and the issue of how the employee is to be paid is likely to be one among the many and varied human resource issues confronting the employee during orientation. An employee may be provided with a stack of forms to complete and may not have the time or opportunity to review them. It is also possible that the employee may be unaware that receiving wages via a payroll card account is optional, particularly if the employer does not present the options clearly. These forms the employee may receive from the employer may not always include all of the relevant information regarding the terms and conditions of the payroll card account, such as fees associated with the card and how cardholders can withdraw funds on the card. Separately, some have raised concerns about the extent to which payroll card providers share program revenue with employers and, if so, whether that revenue sharing has negative consequences for cardholders.

Payroll cards are just one type of network-branded open-loop prepaid products consumers may receive from third parties that disburse funds to consumers by loading the funds onto such accounts. For example, institutions of higher education may partner with certain entities to disburse student financial aid proceeds into network-branded open-loop prepaid products endorsed by those institutions. *See* 34 CFR 668.164(c)(2) (setting forth that certain Federal student aid payments disbursed via ''an account that underlies a stored-value card'' is considered a direct payment to a student or parent). Like with payroll card accounts, some have raised concerns about revenue sharing in connection with prepaid cards provided to students.

A 2014 Government Accountability Office (GAO) report found that of the U.S. colleges and universities participating in Federal student aid programs for the 2011–2012 school year that had agreements with financial firms to provide debit and prepaid card services for students, approximately 80 percent of such agreements were for debit cards, with the remainder for prepaid cards.[47] The report also stated that more than 80 percent of the schools identified in the report with card agreements indicated that students could use their cards to receive financial aid and other funds from the school.[48] Further, the report found instances where certain third-party providers involved in college card programs work with a bank partner.[49]

Among other things, the GAO noted concerns about the fees on student debit and prepaid cards, as well as the lack of ATM access and the lack of the schools' neutrality toward the card programs.[50] It found instances in which schools appeared to encourage students to enroll in the school's specific prepaid card program, rather than present neutral information about disbursement options for financial aid.[51] Relatedly, the Department of Education is in the process of a negotiated rulemaking regarding the use of third-party entities to disburse Federal student aid, including those that may distribute funds via prepaid products.[52]

Further, the Bureau understands that prepaid cards are also used by some insurance providers to pay certain insurance claims such as claims related to a property or casualty loss.[53] During outreach, some insurance providers informed the Bureau that, where permitted by State law, it is faster and more economical to provide workers compensation payments on prepaid cards relative to mailing paper checks. Additionally, after a natural disaster, the disbursement of funds from insurance claims onto prepaid cards may allow funds to be delivered to consumers that may be unable to use or access traditional checking or savings accounts.

Similarly, taxpayers may direct tax refunds onto prepaid cards provided by tax preparers or government entities. These prepaid cards are typically open-loop cards. Other disbursements onto prepaid cards include disbursement of mass transit or other commuting-related funds, which are typically onto restricted closed loop cards. However, the Bureau understands that new transit payment models are emerging, and these models tend to involve open-loop prepaid cards.[54] Aid distributed by relief organizations or government agencies in response to natural disasters is usually loaded onto open-loop cards. In some of these cases, the cards may be reloaded by the entity that initially disbursed funds onto the card.

Finally, government entities also distribute various funds onto prepaid products. In addition to distributing tax refunds onto such products, the Federal government and various State governments may use prepaid products to distribute government benefits such as Social Security Payments,[55] unemployment insurance benefits,[56]

[43] CFPB Bulletin 2013–10, *Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at http://.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.*

[44] *See, e.g.,* Press Release, MasterCard *MasterCard Introduces Payroll Card Standards* (Dec. 13, 2013), *available at http://newsroom.mastercard.com/press-releases/mastercard-introduces-payroll-card-standards/.*

[45] *See, e.g.,* N.Y. State Attorney Gen., Labor Bureau, *The Impact of Payroll Cards on Low-Wage Workers, available at http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf.*

[46] *See, e.g., http://paycard.americanpayroll.org/compliance-regulations* (listing the various State regulations that apply to payroll cards).

[47] U.S. Gov't Accountability Office, GAO–14–91, *College Debit Cards Actions Needed to Address ATM Access, Student Choice and Transparency,* at 8 (Feb. 2014) (GAO 2014 College Card Report), *available at http://www.gao.gov/assets/670/660919.pdf.*

[48] GAO 2014 College Card Report, at 9.

[49] *Id.* at 15.

[50] U.S. Gov't Accountability Office, *GAO Highlights: Highlights of GAO–14–91, a Report to the Chairman, Committee on Health, Education, Labor, and Pension, U.S. Senate* (Feb. 2014), *available at* http://www.gao.gov/assets/670/660920.pdf.

[51] *Id.*

[52] 78 FR 69612 (Nov. 20, 2013).

[53] Mercator Advisory Grp., *Tenth Annual U.S. Prepaid Cards Market Forecasts, 2013–2016,* at 42–43 (Oct. 2013).

[54] *See e.g., https://www.ventrachicago.com/* (The city of Chicago's mass transit card has reloadable open-loop features). *See also http://www.septa.org/key/* (The city of Philadelphia announced that its mass transit card will also have reloadable open-loop features).

[55] Treasury has established the Direct Express program for the distribution of government benefits such as Social Security payments.

[56] *See e.g.,* Nat'l Consumer Law Ctr., *2013 Survey of Unemployment Compensation Prepaid Cards,* at 7 (Jan. 2013), available at *http://www.nclc.org/issues/unemployment-compensation-prepaid-cards.html* (noting that 42 States offer some form of

Continued

child support payments, and other types of disbursements including needs-tested benefits. Needs-tested benefits include funds related to Temporary Assistance for Needy Families (TANF), Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Supplemental Nutrition Assistance Program (SNAP). State and local government programs for distributing needs-tested benefits are typically referred to as electronic benefit (EBT) programs. Most States offer a choice between at least direct deposit to a traditional checking or savings account or a prepaid product for the receipt of unemployment insurance benefits. However, the Bureau understands that several States require the distribution of such benefits onto prepaid products.[57] With respect to other government benefits, as noted below in the discussion of relevant law, Regulation E does not apply to EBT programs.[58] In addition, Treasury's Bureau of the Fiscal Service, on behalf of the United States military, provides both closed-loop and open-loop prepaid cards for use by servicemembers and contractors in the various branches of the armed forces.[59] The features of and fees charged in connection with these cards may vary.

The Bureau believes that as a general matter, prepaid products loaded by third parties present some of the same consumer protection issues as GPR cards such as the lack of clear disclosures about fees and other important terms and conditions, and the lack of opportunity for consumers to compare and evaluate different products before acceptance. Consumers may use these products as their primary transaction account, particularly when the product is loaded with all of the consumer's incoming funds (*e.g.,* wages, unemployment benefits, student loan proceeds, etc.). In accepting the product, a consumer may not fully grasp all of its fees and terms and how those fees and terms might impact the consumer over time. In addition and as previously noted, consumers may be offered these products in situations that make comparison shopping difficult.

However, the Bureau believes that many prepaid accounts with funds loaded by third parties may present distinct set of issues as well. The Bureau understands many types of these accounts are distributed to very specific segments of consumers such as college-age students or very low-income consumers, and accordingly, there may be distinct consumer protection issues associated with these prepaid products.

Digital Wallets

In recent years, there has been increasing industry interest in developing ''digital wallets'' and ''mobile wallets.'' A consumer may keep cash, debit and credit cards, GPR cards, and gift cards in a physical wallet or purse. Digital wallets have been marketed as a viable alternative to a physical wallet, because a number of digital wallets currently available can store one or more of the consumer's payment credentials electronically.[60] For example, a digital wallet may allow a consumer to store the consumer's bank account, debit card, credit card, and/or prepaid card credentials in the wallet, which may be accessed by the consumer through a Web site. Digital wallets that a consumer could access using a mobile device such as a smartphone have been described as mobile wallets.[61] Further, some, but not all, digital wallets currently available to consumers allow a consumer to store funds in it directly or by funding a prepaid product, and draw down the stored funds.[62]

Digital wallets have been marketed as allowing consumers to electronically transmit funds in multiple settings. Currently, digital wallets can be used by a consumer for online purchases,[63] payments at brick-and-mortar retailers through, for example, contactless communication at the point of sale,[64] as well as person-to-business (*i.e.* bill pay) and P2P transfers.[65] The Bureau understands that there may be significant variations in how funds are held in digital wallets and how payments are processed by digital wallets and that payment processing by digital wallets is evolving quickly. For instance, some digital wallets provide methods for accessing the ACH system to make a payment. In this case, a consumer might use a digital wallet to pay for an online purchase, and the digital wallet facilitates the transfer of funds from the consumer's checking account to fund the transaction. In other cases, the consumer's funds are first transferred to the digital wallet either by the consumer or by the digital wallet provider, and then transferred to ultimate payee. For example, it may be possible for a consumer to maintain a positive balance in the wallet through transfers from sources such as a bank account, a credit, debit, or prepaid card, or a P2P transfer. The consumer's digital wallet balance may be held in the name of the digital wallet provider in a pooled account that is not further divided into subaccounts that are held in the name of any individual consumer.

A mobile wallet may act as a pass-through that enables consumers to pay for goods at a store using payment credentials for other accounts, such as credentials for a consumer's credit card, debit, or prepaid card that the consumer has stored on the mobile wallet. For example, a consumer could use a mobile wallet on a smartphone to select the consumer's debit card to fund a payment for a good or service, and then use near field communication to tap the phone at a point-of-sale terminal to pay. The Bureau expects that variations of digital wallets will continue to grow and observes that the methods described herein are a few of the funding options available in the current market.

Credit Features, Overdraft Programs & Prepaid Products

As currently offered and marketed, most prepaid products do not allow consumers to spend more money than is loaded onto the product. Although there are a few exceptions, most providers of prepaid products do not currently offer overdraft services,[66] a linked line of

prepaid card for distribution of employment compensation payments).

[57] *Id.* at 1.

[58] *See* EFTA section 904(d)(2)(B); Regulation E § 1005.15(a)(2).

[59] *See, e.g.,* Navy Cash/Marine Cash, *http://fms.treas.gov/navycash/index.html* and Eagle Cash, *http://fms.treas.gov/eaglecash/index.html.* As discussed further below, the Navy Cash and Marine Cash products may have multiple ''purses'' such that one ''purse'' can only be used at a limited number of linked merchants (such as various places on a Naval vessel) while the other ''purse'' can be linked to a payment card network that provides global acceptance to unaffiliated merchants.

[60] Aite Grp. LLC, *Money Goes Mobile,* (May 2014), *available at http://www.aitegroup.com/report/money-goes-mobile.*

[61] *Id.*

[62] *See e.g., http://www.google.com/wallet/index.html* (last accessed on Oct. 28, 2014) (''The Wallet Balance is the money in your Google Wallet . . . [money will be stored in the wallet]. [Use] your Wallet Balance to send money to friends [and shop], or transfer money to your bank account. You can also add money to your Wallet Balance . . . from a credit card, debit card or linked bank account.''); *see also, https://www.serve.com/* (last accessed on Oct. 28, 2014) (''Use the American Express Serve Mobile App to check your balance and recent transactions, pay bills on the go, add checks, and send money to family or friends who have a Serve Account. Download the American Express Serve Mobile App for iOS or Android.'').

[63] *See e.g.,* Visa Checkout Terms of Service, *https://secure.checkout.visa.com/pages/terms?country=US&locale=en* (last accessed on Oct. 28, 2014).

[64] *See e.g.,* Google Wallet Terms of Service, *https://wallet.google.com/termsOfService?type=BUYER&gl=US* (last accessed on Oct. 28, 2014).

[65] *See e.g.,* Boost Mobile Wallet Terms of Service, (*https://boostmobile.wipit.me/legal/terms.aspx* (last accessed on Oct. 28, 2014).

[66] As discussed further below, overdraft services evolved from ad hoc, discretionary programs in which financial institutions would sometimes cover particular transactions that would otherwise overdraw an account as a courtesy to the consumer

credit,[67] access to a deposit advance product[68] or other method of accessing credit in connection with a prepaid product.[69] Instead, prepaid products, including many GPR cards, are actively marketed as ''safe'' alternatives to checking accounts with opt-in overdraft services, credit cards, or other credit options.[70]

As the Bureau observed above, it appears that a desire to avoid fee-based overdraft services motivates a sizeable portion of consumers to choose prepaid products, such as GPR cards, over checking accounts.[71] Further, a slight majority of consumers that participated in the 2014 Pew Survey stated that one of the major reasons that they use prepaid products is that they help those consumers control their spending.[72] Similarly, the Bureau's own focus groups also found that many consumers choose prepaid products because they help them control their spending.[73] Unlike deposit accounts with an overdraft feature or linked lines of credit, credit cards, and other credit products, consumers that use prepaid products without credit features (*i.e.,* most prepaid consumers) cannot spend funds that have not been loaded into the account.

It also appears that many consumers specifically seek to acquire prepaid products that do not offer overdraft services or credit features because they have had negative experiences with credit products, including checking accounts with overdraft features or want to avoid fees related to such products. For example, the 2014 Pew Survey found that many prepaid consumers previously had a checking account and either lost that account (due to failure to repay overdrafts or related issues) or gave up the checking account due to overdraft or bounced check fees.[74] Relatedly, prepaid products are often used by consumers who cannot obtain a checking account due to bad credit or other issues.[75] GPR cards—which are sometimes marketed as involving ''no credit check''—provide consumers with access to electronic payment networks, the ability to make online purchases, and increased security and convenience over alternatives such as cash.[76] Prepaid consumers often are unable to open credit card accounts and cannot get a traditional checking account with a debit card due to negative reports with credit reporting agencies focusing on checking-account related credit issues.

Apart from consumers' reasons for favoring prepaid products, regulatory factors may also have discouraged prepaid product providers from offering overdraft services or credit features in connection with their products. The Bureau understands that some prepaid product issuers have received guidance from their prudential regulators that has deterred those financial institutions from allowing prepaid products they issue to offer overdraft services or credit features. Relatedly, the Bureau believes that a 2011 Office of Thrift Supervision enforcement action regarding a linked deposit advance feature may also have had a chilling effect on the growth of DAPs.[77] Finally, while a number of industry commenters to the Bureau's Advance Notice of Proposed Rulemaking (Prepaid ANPR) expressed interest in offering overdraft services or credit features in connection with prepaid products, some industry commenters also expressed their reluctance to proceed until there is greater certainty as to whether this rulemaking would alter the permissible bounds of such a program.

The Bureau understands that the only credit features being offered on prepaid accounts currently are structured as overdraft services.[78] To date, overdraft services on prepaid accounts have been generally structured similar to overdraft services offered by financial institutions on checking accounts, but in some ways, are more consumer-friendly. For example, the programs charge a per-transaction fee each time the consumer incurs an overdraft (*e.g.,* one program

rather than return the transaction and subject the consumer to a non-sufficient-funds (NSF) fee, merchant fees, and other negative consequences from bounced checks. Overdraft services fees are imposed on a per transaction basis, and the financial institution takes the balance owed as soon as additional funds are deposited into the account. Further, as explained below, the Board exempted overdraft services from regulation under TILA and Regulation Z, as long as they are provided pursuant to an agreement that does not obligate the financial institution to cover any particular transaction. In addition, these programs are not typically subject to traditional underwriting processes used for other credit products. Under Regulation E, financial institutions must obtain an opt-in by the consumer before imposing overdraft fees on ATM and one-time point of sale transactions by debit card. *See* Regulation E, § 1005.17(b).

[67] A linked line of credit is a separate line of credit that a financial institution ''links'' to a deposit account or prepaid product to draw funds automatically where transaction made using funds from the account or product would otherwise take the balance on the account or product negative. Such a credit feature is generally subject to interest rates, traditional credit underwriting, and the Truth in Lending Act and Regulation Z. Similarly, some financial institutions offer consumers an option to link their credit card to a deposit account to provide automatic ''pulls'' to cover transactions that would otherwise exceed the balance in the account.

[68] A deposit advance product (DAP) is a small-dollar, short-term loan or line of credit that a financial institution makes available to a customer whose deposit account reflects recurring direct deposits. The customer obtains a loan, which is to be repaid from the proceeds of the next direct deposit. DAPs typically do not assess interest and are fee-based products. Repayments are typically collected from ensuing deposits, often in advance of the customer's other bills. (See CFPB Whitepaper on Payday and Deposit Advance Products: Initial Data Findings, Apr. 30, 2013, *see also* OCC and FDIC Final Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552, 70624 (Nov. 26, 2013). Publication of the Bureau's White Paper and the guidance issued by the FDIC and OCC has caused many financial institutions to reevaluate their DAP programs.

[69] For example, a financial institution could offer a product whereby consumers with a credit account access that account and ''push'' the credit into their prepaid accounts where it can be spent.

[70] *See, e.g.,* NBCPA, *What are Prepaid Cards?, http://www.nbpca.com/en/What-Are-Prepaid-Cards/Prepaid-Card-Benefits.aspx* (last visited Oct. 28, 2014) (''For many Americans, prepaid cards serve as a tool with which to more effectively budget their spending. With a prepaid card, consumers avoid the risk of over-spending or overdraft, thus avoiding the interest, fees and potential negative credit score implications of traditional credit cards. And for parents, prepaid cards provide tools to maintain control over their teens' or college students' spending.''); *see also* Examining Issues in the Prepaid Card Market: Hearing before the Subcomm. On Fin. Inst. and Consumer Prot., S. Comm. on Banking, Housing and Urban Affairs, 112th Cong. 2 (2012) (Remarks of Dan Henry, Chief Executive Officer, NetSpend Holdings, Inc.) (''Our customers are typically working Americans who want control. . . .'').

[71] 2014 Pew Survey, at 14 ex.12 (noting that the top two reasons consumers claim to use prepaid cards related to avoiding credit card debt (67 percent) and helping them not spend more money than they actually have (66 percent).

[72] 2014 Pew Survey, at 13–14.

[73] ICF Report, at 5.

[74] 2014 Pew Survey, at 7–8 (noting both that ''Most prepaid card users who have had a checking account in the past have paid associated overdraft fees for debit card usage'' and that ''Among those prepaid card users who have ever had a bank account, 41 percent of them say they have closed or lost a checking account because of overdraft or bounced check fees'').

[75] *Id.* at 8 (noting that one-third of prepaid consumers who have ever had a checking account say they have closed a bank checking account themselves because of overdraft or bounced check fees and 21 percent who say they have had a financial institution close their account because of overdraft or bounced check fees).

[76] *See* ICF Report, at 5; 2014 Pew Survey, at 14 ex.12 (noting that 72 percent of prepaid consumers say that a reason they have a prepaid card is to make purchases online and other places that do not accept cash).

[77] *See In the Matter of MetaBank,* Office of Thrift Supervision, Order No. CN 11–25 (July 15, 2011), available at *http://www.occ.gov/static/ots/enforcement/97744.pdf.*

[78] *See* CFSI Prepaid Industry Scorecard (noting that only two in a survey of 18 GPR programs representing 25% of the market currently offers an opt-in overdraft service); CFPB Overdraft Whitepaper, at 14 (summarizing data showing that most banks and credit unions offer opt-in overdraft programs). Apart from actual overdraft programs, some prepaid programs, according to their terms and conditions, reserve the right to impose a fee for a negative balance on a prepaid account. (These programs' agreements typically state that the cardholder is not permitted to spend beyond the balance in the prepaid account, but if circumstances were to occur that cause the balance to go negative, a fee will or may be imposed. Some agreements state that repeated attempts to spend beyond the card balance will or may result in the prepaid account being closed). Roughly 10 percent of reviewed agreements noted such a charge.

charges $15) although the fee tends to be lower than fees typically charged for checking accounts (median fee as of July 2014 is $35).[79] In addition, issuers of certain prepaid products with overdraft services will waive the overdraft fee if the consumer repays the overdraft quickly (*e.g.,* within 24 hours) or if the overdraft is only for a nominal amount (*e.g.,* $5 or $10). Further, these terms and conditions also limit the number of overdrafts that will be permitted in a given month and the amount by which the account balance can go negative, and contain ''cooling off'' periods after a consumer has incurred more than a certain number of overdrafts. During the cooling off period, the consumer is typically prohibited from using the overdraft service.

With respect to the issue of fees, revenue from overdraft services does not appear to have significantly influenced the pricing structure of prepaid products in the same way that overdraft services have influenced traditional checking accounts. Indeed, as discussed above, overdraft services offered in connection with prepaid products are relatively rare, and fees are relatively modest compared to similar fees associated with checking account overdraft programs. As discussed in greater detail in the section-by-section analysis below, as a result of several regulatory exemptions discussed below, the Bureau believes that checking account overdraft programs have evolved from courtesy programs under which financial institutions would decide on a manual, ad hoc basis to cover particular transactions and help consumers avoid negative consequences to automated programs that are the source of as much as two-thirds of financial institutions' deposit account revenue.[80] As a result, depository institutions and credit unions have developed checking accounts to have low (or sometimes no) up-front costs, to add services such as online bill pay (including not only electronic payments through the ACH network but also manual generation of checks authorized through the bank or credit union's on-line bill pay portal) at no additional cost, and to rely on ''back end'' fees such as per-transaction overdraft fees and NSF fees to maintain profitability. While some prepaid products may also have low or no upfront fees associated with them, the Bureau believes that this is largely due to the fact that as a general matter, fixed costs for prepaid products are substantially lower than similar costs for many checking accounts.[81] Moreover, financial institutions that issue prepaid accounts typically do not earn their revenue from ''back-end'' overdraft fees or NSF fees. Instead, they earn revenue from other types of fees, such as ATM fees, and interchange fees collected from use of a prepaid account on a payment network.[82]

As discussed in greater detail below, certain prepaid products, such as payroll card accounts and prepaid accounts that receive Federal payments, must comply with Regulation E's overdraft provisions. However, because many prepaid products are not now currently subject to Regulation E, they may not be required to comply with its provisions specific to overdraft services. Nonetheless, the Bureau understands that program managers of prepaid products with overdraft services or credit features have structured their products to comply with Regulation E's rules regarding overdraft services. Specifically, the Bureau understands that overdraft programs on GPR cards and payroll card accounts typically provide a disclosure similar to Model Form A–9 in appendix A to Regulation E.[83] This model form contains disclosures that require a consumer to opt-in to the overdraft service before a financial institution may charge the consumer a fee for a point-of-sale debit or ATM transaction that results in an overdraft of a consumer's account.[84]

The Bureau understands that prepaid products that are associated with overdraft services or credit features generally offer such services only to those consumers that meet specified criteria, such as evidence of recurring deposits over a certain dollar amount. These recurring deposits presumably allow the financial institution to have some confidence that there will be incoming funds of adequate amounts to repay the debt. Further, the Bureau understands that the terms and conditions of prepaid product overdraft programs typically require that the next deposit of funds into the prepaid product—through either recurring deposits or cash reloads—be used to repay the overdraft, or they will claim such funds for the purpose of repaying the overdraft.

B. Existing Regulation of Prepaid Products

There are several Federal regulatory regimes, including those regarding consumer protection; receipt of Federal payments; interchange; and international money laundering, terrorist financing, and other financial crimes that apply to some or all types of prepaid products. In addition to EFTA, its implementing regulation, Regulation E, and related guidance, other relevant regulations include Treasury's Financial Management Service's rule on the receipt of Federal payments on prepaid cards;[85] the Board's Regulation II on debit card interchange and routing (12 CFR part 235); and FinCEN's prepaid access rule.[86]

Prudential regulators have also issued guidance about the application of their regulations to prepaid products, program managers, and financial institutions that issue prepaid products. For example, the FDIC has issued guidance regarding pass-through deposit insurance for prepaid accounts.[87] The Office of the Comptroller of the Currency (OCC) has published a guidance bulletin to provide guidance to national banks for assessing and managing the risks associated with prepaid access programs.[88] However, as

[79] Bureau staff determined the median figure for checking account overdraft fees through an analysis of the overdraft fees charged by the largest 50 U.S. banks ranked by consumer checking balances.

[80] According to information supplied to the Bureau as part of its large bank overdraft study and reported in its Overdraft White Paper, overdraft and NSF-related fees from consumer checking accounts constituted 61 percent of consumer and 37 percent of total deposit account service charges earned by study banks in 2011. If aggregate study bank fee revenue ratios could be extrapolated to all FDIC-insured institutions, this would imply the banking industry earned roughly $12.6 billion in consumer NSF and overdraft fees in 2011. *See* CFPB Overdraft White Paper, at 14–15.

[81] *See* Cathy Corby Parker, *Is ''What's Old New Again'' for Financial Institutions in Prepaid?* (Aug. 2012), *available at https://www.aba.com/Tools/Offers/Documents/What's%20Old%20Is%20New%20Again%20White%20Paper.pdf.*

[82] For example, in 2013 one major program manager derived approximately 32 percent of its operating revenue from cash-reload fees and 30 percent from interchange fees. *See* Green Dot Corp., 2013 Annual Report, at 30 (2014) available at *http://phx.corporate-ir.net/phoenix.zhtml?c=235286&p=irol-reportsAnnual.*

[83] The Bureau understands that prepaid product providers that offer overdraft services typically do so with respect to both their GPR cards and payroll card accounts, to the extent they offer both products.

[84] The Bureau found in its Study of Prepaid Account Agreements that some programs' agreements state that while they do not offer formal overdraft services, they will impose negative balance or other similar fees for transactions that may take an account negative despite generally not permitting such activity. *See* Study of Prepaid Account Agreements, at 24–25. The Bureau does not believe such fees are typically charged.

[85] 75 FR 80335 (Dec. 22, 2010).

[86] 76 FR 45403 (July 29, 2011).

[87] FDIC General Counsel Opinion No. 8, Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms, 73 FR 67155, 67157 (Nov. 13, 2008) (FDIC 2008 General Counsel Opinion).

[88] Office of the Comptroller of Currency, OCC Bulletin 2011–27, *Prepaid Access Programs, Risk Management Guidance and Sound Practices* (June 28, 2011), *available at http://www.occ.gov/news-issuances/bulletins/2011/bulletin-2011-27.html.*

discussed below, the Bureau believes that there are gaps in the existing Federal regulatory regimes that cause certain prepaid products not to receive full consumer protections, in particular under Regulation E. In addition to Federal regulations that apply to prepaid products, the Bureau also discusses below some State consumer protection laws and other regulations specific to prepaid products.

1. The Electronic Fund Transfer Act and Related Provisions in Regulation E Core Provisions of EFTA and Regulation E

Congress enacted EFTA in 1978 with the purpose of ''provid[ing] a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.'' However, EFTA's primary objective is ''the provision of individual consumer rights.'' [89] Congress also empowered the Board to promulgate regulations implementing EFTA. EFTA section 904(a). With the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), authority to implement most of EFTA transferred to the Bureau.[90] *See* Dodd-Frank Act sections 1061(b) and 1084; 12 U.S.C. 5581(b); 15 U.S.C. 1693a *et seq.*

The regulations first promulgated by the Board to implement EFTA now reside in subpart A of Regulation E, 12 CFR part 1005.[91] These rules provide a broad suite of protections to consumers who make electronic fund transfers (EFTs). An EFT is any transfer of funds initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. § 1005.3(b)(1). Regulation E also provides protections for accounts from which consumers can make EFTs. In its initial rulemaking to implement EFTA, the Board developed a broad definition of ''account,'' which closely mirrored the definition of ''account'' in EFTA.[92] The definition provides that, subject to certain specific exceptions, an account is a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes. § 1005.2(b)(1).

For covered accounts, Regulation E mandates that consumers receive certain initial disclosures, in writing and in a form that the consumer can keep. § 1005.4(a)(1). As applicable, the initial disclosures must include, among other things, disclosures regarding a consumer's liability for unauthorized EFTs, an error resolution notice, contact information for the financial institution providing the account, the types of transfers a consumer may make and any limitations on the frequency and dollar amount of transfers, and the fees associated with making EFTs. *See generally* § 1005.7(b). Regulation E also sets forth substantive provisions on error resolution and impose limits on a consumer's liability for unauthorized EFTs. *See* §§ 1005.6 and 1005.11. Moreover, Regulation E contains, among other things, provisions specific to periodic statements that generally must be provided in writing (§ 1005.9(b)), the issuance of access devices (§ 1005.5),[93] preauthorized EFTs and compulsory use (§ 1005.10), requirements for overdraft services (§ 1005.17), and ATM disclosures (§ 1005.16).

As discussed above, the Dodd-Frank Act transferred authority to implement most of EFTA from the Board to the Bureau. Since assuming the transferred authority, the Bureau has amended Regulation E in two substantive respects. First, as discussed in more detail in the section-by-section analysis below, the Bureau added consumer protections to Regulation E for certain international fund transfers. 12 CFR 1005.30 *et seq.* Additionally, the Bureau amended Regulation E with respect to certain rules pertaining to ATM fee notices.[94] However, before authority transferred from the Board to the Bureau, the Board had revised Regulation E on multiple occasions to add, among other things, protections for products used for the electronic distribution of government benefits, payroll card accounts, gift cards, and gift certificates. The Board's amendments to Regulation E to expand coverage to these additional account types are discussed below.

Amendments to Regulation E Regarding Additional Account Types

In 1994, the Board amended Regulation E to extend Regulation E's protections to accounts used for the electronic distribution of government benefits in what was then 12 CFR 205.15 (1994 EBT Rule).[95] After the Board finalized the 1994 EBT Rule, Congress limited the application of EFTA and Regulation E with respect to State and local electronic benefit transfer programs to only those programs that are ''non-needs tested,'' when it enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a comprehensive welfare reform law.[96]

The enactment of the statute necessitated a change to the 1994 EBT Rule to exempt needs-tested government benefit programs established or administered under State or local law (*e.g.,* benefits such as those provided under SNAP and the Aid to Families with Dependent Children program). As the Board explained at the time, the revision to EFTA was ''enacted by the Congress at the urging of State officials, who expressed concern about the costs of compliance with EFTA and Regulation E. In particular, the States believed that EFTA provisions limiting a recipient's liability for unauthorized transfers could raise serious budgetary problems at the [S]tate level.'' [97] As a result, the Board ultimately adopted a rule exempting EBT programs established or administered by State or local government agencies from Regulation E. However, all accounts used to distribute benefits for Federally-administered programs (including Federal needs-tested programs) and non-needs tested State and local government benefit programs, such as employment-related ones, remained covered by Regulation E.[98]

When the Board resumed rulemaking after enactment of the welfare reform legislation, it also took notice that prepaid cards (at the time referred to as stored-value cards) were beginning to be used by more consumers. The Board sought comment on whether to adopt rules specific to prepaid financial products (other than government benefit accounts) pursuant to its authority under EFTA (1996 Stored-Value Proposal).[99] The Board explained that the facts, as it understood them, supported a determination to include stored-value accounts as accounts under Regulation E. Among the provisions considered in the 1996 Stored-Value Proposal, the Board proposed to extend Regulation E's error resolution

[89] *See* Public Law 95–630; 92 Stat. 3728 (1978).

[90] Public Law 111–203, section 1084, 124 Stat. 2081 (2010) (codified at 12 U.S.C. 1693).

[91] These provisions were originally adopted as 12 CFR part 205 but, upon transfer of authority in the Dodd-Frank Act to implement Regulation E to the Bureau were renumbered as 12 CFR part 1005. 76 FR 81020 (Dec. 27, 2011). Unless otherwise noted, historical provisions noted described as residing in 12 CFR part 1005 originally were contained in 12 CFR part 205.

[92] 44 FR 18468, 18480 (Mar. 28, 1979).

[93] An access device is a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate EFTs. § 1005.2(a)(1).

[94] 78 FR 18221 (Mar. 26, 2013).

[95] 59 FR 10678 (Mar. 7, 1994).

[96] Public Law 104–193, 110 Stat. 2105 (1996).

[97] 62 FR 3242, 3243 (Jan. 22, 1997).

[98] 62 FR 43467 (Aug. 14, 1997).

[99] 61 FR 19696 (May 2, 1996).

provisions to stored-value accounts and provide a periodic statement alternative for such accounts similar to what was adopted for government benefit cards in the 1994 EBT Rule. In the proposal, the Board noted pending legislation in Congress that would address stored-value cards. H.R. 2520, 104th Cong., § 443; S. 650, 104th Cong., § 601 (1995).

Ultimately, Congress directed the Board to conduct a study to evaluate whether provisions of EFTA could be applied to stored-value products without adversely affecting the cost, development, and operation of such products.[100] The Board concluded in a March 1997 report that:

> [G]iven the limited experience [at that time] with electronic stored–value products to date, it is difficult to predict whether the benefits to consumers from any particular Regulation E provision would outweigh the corresponding costs of compliance. . . . [F]ull application of Regulation E would likely impose substantial operating and opportunity costs of compliance. Partial application of Regulation E would be less burdensome than full application but, depending on the details, could still impose significant operating and opportunity costs for some electronic stored-value products.[101]

The Board ultimately did not finalize the 1996 Stored-Value Proposal. In the report, it concluded that the market was evolving rapidly and was not yet ripe for regulation.[102]

The Board next considered changes to Regulation E with respect to prepaid products in 2004, when it proposed amendments to Regulation E to extend it to payroll card accounts established by an employer for providing an employee's compensation on a regular basis.[103] The Board concluded that extending a modified form of Regulation E protections was warranted for payroll card accounts because they are often used as account substitutes. However, as discussed in greater detail below, yet again, the Board decided not to extend such protections to other prepaid products such as general-use prepaid cards, because it concluded that consumers used such cards in many different ways.

In its final rule, the Board included payroll card accounts within the definition of account in § 1005.2(b) (Payroll Card Rule).[104] The Board also established provisions in Regulation E specific to payroll card accounts that modified certain Regulation E provisions as the Board deemed appropriate. As noted above, Regulation E generally requires financial institutions to provide periodic statements in writing. *See* § 1005.9(b). The Board allowed providers of payroll card accounts to avoid this requirement, if the institution makes available to the consumer: (1) The account balance, through a readily available telephone line; (2) an electronic history of account transactions that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)); and (3) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)). *See* § 1005.18(b). Related provisions in § 1005.18(c) modify other requirements of Regulation E with respect to payroll card accounts. They include modification related to the requirements for initial disclosures, annual error resolution notices (otherwise required by § 1005.8(b)), and error resolution and limitations on liability, in recognition of the modified periodic statement requirement.

As noted above, in adopting the Payroll Card Rule, the Board considered whether also to include GPR cards within Regulation E. The Board ultimately concluded that, as of 2006, it was premature to do so. In its view of the marketplace at that time, the Board noted that consumers did not often use other prepaid products such as general-use prepaid cards in the same way that they used payroll card accounts. The Board stated that ''[F]or payroll card accounts that are established through an employer, there is a greater likelihood [than for general-use prepaid cards] that the account will serve as a consumer's principal transaction account and hold significant funds for an extended period of time.'' [105]

Similarly, in an earlier interim final rule that established that payroll card accounts are covered accounts under Regulation E, the Board expressed its belief that to the extent that consumers use general-use prepaid cards like gift cards, ''consumers would derive little benefit from receiving full Regulation E protections for a card that may only be used on a limited, short-term basis and which may hold minimal funds, while the costs of providing Regulation E initial disclosures, periodic statements, and error resolution rights would be quite significant for the issuer.'' [106] It also noted that GPR cards are ''generally designed to make one-time or a limited number of payments to consumers and are not intended to be used on a long-term basis.'' [107]

In 2009, Congress enacted the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act).[108] Among other provisions, the Credit CARD Act instructed the Board to promulgate new rules regarding expiration dates and dormancy or inactivity fees for gift cards, gift certificates, and certain types of general-use prepaid cards that are marketed or labeled as gift cards. The statute generally excluded general-use prepaid cards that are reloadable and not marketed or labeled as a gift card or gift certificate. Credit CARD Act section 401; EFTA section 915. In 2010, the Board issued the resulting implementing regulations, set forth in § 1005.20 of current Regulation E (Gift Card Rule).[109]

Following the Credit CARD Act, the Gift Card Rule only covers certain general-use prepaid cards. Under the rule, covered general-use prepaid cards are those that are non-reloadable cards or that are reloadable and marketed or sold as a gift card. *See* § 1005.20(a)(3) (definition of a ''general-use prepaid card''). Moreover, like the statute, the Gift Card Rule excludes those general-use prepaid cards that are reloadable and not marketed or labeled as a gift card or gift certificate. § 1005.20(b)(2). For covered prepaid products, the Gift Card Rule requires the disclosure of certain fees and restricts a person's ability to impose dormancy, inactivity, or service fees for certain prepaid products, primarily gift cards. § 1005.20(d) and (f). Additionally, among other things, the Gift Card Rule generally prohibits the sale or issuance of covered prepaid products that have an expiration date of less than five years. § 1005.20(e). In adopting the Gift Card Rule, the Board did not apply the majority of Regulation E's protections, including provisions regarding periodic statements, liability for unauthorized transactions, and error resolution to covered prepaid products. However, Congress explicitly gave the Board the authority to do so. Credit CARD Act section 401; EFTA section 915(d)(1).

[100] Public Law 104–208, 110 Stat. 3009 (1996).

[101] Bd. of Governors of the Fed. Reserve Sys., *Report to Congress on the Application of the Electronic Fund Transfer Act to Electronic Stored-Value Products,* at 75 (Mar. 1997), *available at http://www.Federalreserve.gov/boarddocs/rptcongress/efta_rpt.pdf.* Notably, the products examined by the Board in this report differ from most prepaid products in use today.

[102] *Id.*

[103] 69 FR 55996 (Sept. 17, 2004).

[104] 71 FR 51437, 51438 (Aug. 30, 2006).

[105] 71 FR 51437, 51441 (Aug 30, 2006).

[106] 71 FR 1473, 1475 (Jan. 10, 2006).

[107] *Id.*

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

[109] 75 FR 16580 (Apr. 1, 2010).

2. FMS Regulations of the Treasury Department

The Treasury Financial Management Service (FMS), now part of Treasury's Bureau of the Fiscal Service, manages all Federal payments. In 2010, it promulgated an interim final rule that permitted delivery of Federal payment to prepaid cards (the FMS Rule).[110] Among other things, the FMS Rule provides that for a prepaid card to be eligible to receive Federal payments, the card account must be held at an insured financial institution. Additionally, the card account must be set up to meet the requirements for FDIC or NCUSIF pass-through deposit or share insurance, as discussed in greater detail below. Additionally, the card account must not have an attached line of credit or loan feature that triggers automatic repayment from the card account. Moreover, the card account issuer must comply with all of the requirements, and provide the cardholder with all of the consumer protections, that apply to payroll card accounts under Regulation E. 31 CFR 210(b)(5)(i).

Based on Bureau outreach including discussions with industry participants, comment letters received in response to the Prepaid ANPR,[111] as well as a review of numerous prepaid products' terms and conditions, discussed in more detail below, the Bureau believes that many providers currently comply with the FMS Rule for all of their prepaid products, including those not receiving Federal payments. The Bureau further believes that to comply with the FMS Rule, many prepaid product providers had to adjust their systems and programs.[112] For example, to the extent that a provider did not maintain procedures for resolving errors with respect to the prepaid products it offered (or maintained procedures different from what Regulation E requires), the provider had to either adjust its processes to provide these protections or ensure that their prepaid products do not receive Federal payments.

3. Pass-Through Deposit Insurance

The FDIC, among other things, protects funds placed by depositors in insured depository institutions. FDIC insurance protects deposit accounts, including checking and savings accounts, money market deposit accounts and certificates of deposit against loss up to $250,000 per depositor, per insured depository institution, within each account ownership category (*e.g.,* for individual owners, co-owners, trust beneficiaries, and the like).[113] The NCUSIF plays a similar role for insured credit unions.[114]

As noted above, the Bureau understands that funds loaded onto prepaid products are typically held in pooled accounts at depository institutions or credit unions. Both the FDIC and NCUA have special rules, discussed below, regarding how such accounts may qualify for, as applicable, FDIC or NCUSIF pass-through insurance. The Bureau believes that provided these requirements are met, most prepaid products are eligible for FDIC (or NCUSIF) pass-through deposit (or share) insurance.

With respect to the FDIC's rules for determining the ownership of deposits placed at insured depository institutions by agents or custodians of the true holder of the funds, its 2008 General Counsel Opinion No. 8 provides that FDIC's deposit insurance coverage will ''pass through'' the custodian to the underlying individual owners of the deposits in the event of failure of an insured depository institution, provided that three specific criteria are met. Those criteria are as follows. First, the account records of the insured depository institution must disclose the existence of the agency or custodial relationship. This requirement can be satisfied by opening the account under a title such as the following: ''ABC Company as Custodian for Cardholders.'' Second, the records of the insured depository institution or records maintained by the custodian or other party must disclose the identities of the actual owners and the amount owned by each such owner. Third, the funds in the account actually must be owned (under the agreements among the parties or applicable law) by the purported owners and not by the custodian (or other party).[115]

The NCUA's regulations similarly state that:

> [I]f the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interest of other parties in the account must be ascertainable either from the records of the credit union or the records of the member maintained in good faith and in the regular course of business.

12 CFR 745.2(c)(2). NCUA regulations governing share insurance for specific types of accounts provide additional details. For example, provisions governing retirement and other employee benefit plan accounts specifically address pass-through insurance, stating that ''[a]ny shares of an employee benefit plan in an insured credit union shall be insured on a 'pass-through' basis, in the amount of up to the [Standard Maximum Share Insurance Amount] for the non-contingent interest of each plan participant, in accordance with § 745.2 of this part.'' 12 CFR 745.9–2(a)*; see also, e.g.,* 12 CFR 745.3, 745.4, 745.5, 745.8, 745.9–1.

4. Interchange and the Board's Regulation II

Section 1075 of the Dodd-Frank Act added new section 920 to EFTA regarding debit card interchange and amended EFTA section 904(a) to give the Board sole authority to prescribe rules to carry out the purposes of section 920.[116] It contains several provisions related to debit cards and electronic debit transactions. EFTA section 920(a)(2) requires that the amount of any interchange fee that an issuer of debit cards receives or charges with respect to an electronic debit transaction be reasonable and proportional to the cost incurred by the issuer with respect to the transaction. It directs the Board to establish standards for assessing whether the amount of any interchange fee is reasonable and

[110] 75 FR 80335 (Dec. 22, 2010). Prior to the effective date of the FMS Rule, prepaid cards (other than those issued under FMS-established programs) were not eligible to receive Federal payments.

[111] 77 FR 30923 (May 24, 2012).

[112] In issuing the FMS Rule, Treasury noted that it:

> [B]elieves that a number of prepaid cards already provide most, though not necessarily all, of the payroll card protections to cardholders. It is our expectation that some issuers of existing prepaid cards will choose to modify the terms and conditions of the card accounts to include all of the payroll card protections to cardholders, so that their cards will be eligible to receive Federal payments. We also anticipate that as new prepaid card programs are developed, issuers seeking to make the cards available to Federal payment recipients will structure their cards to incorporate Regulation E's payroll card protections.

75 FR 80335, 80338 (Dec. 22, 2010).

[113] *See, e.g., http://www.fdic.gov/deposit/deposits/dis/.*

[114] *See, e.g., http://www.ncua.gov/DataApps/Pages/SI-NCUA.aspx.*

[115] FDIC General Counsel Opinion No. 8, *Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms,* 73 FR 67155, 67157 (Nov. 13, 2008), internal citations omitted.

[116] The amendment is known as ''The Durbin Amendment,'' after U.S. Senator Richard Durbin of Illinois, who was the amendment's chief sponsor. *See, e.g.,* David Morrison, *Durbin Amendment Lawsuit Unresolved as 2013 Winds Down,* Credit Union Times Magazine, Dec. 18, 2013, *available at http://www.cutimes.com/2013/12/18/durbin-amendment-lawsuit-unresolved-as-2013-winds*; *see also* Zhu Wang, *Debit Card Interchange Fee Regulation: Some Assessments and Considerations,* 98 Econ. Q. 159 (2012) *available at https://www.richmondfed.org/publications/research/economic_quarterly/2012/q3/pdf/wang.pdf.*

proportional to the cost incurred by the issuer. However, as discussed below, there are a few exemptions from the limitation on interchange fees that an issuer may receive from or charge to a merchant.

EFTA section 920(c) sets forth definitions that apply solely for the purposes of EFTA section 920. Section 920(c)(5) defines an electronic debit transaction as ''a transaction in which a person uses a debit card.'' Additionally, section 920(c)(2) defines debit card to include ''a general-use prepaid card, as that term is defined in section 915(a)(2)(A),'' which is the Credit CARD Act's definition of general-use prepaid card. Accordingly, interchange transaction fees for transactions made with general-use prepaid cards (as defined under the Credit CARD Act) would be subject to the debit card interchange fee restrictions set forth in EFTA section 920(a).

As noted above, EFTA section 920(a) provides certain exemptions from the interchange fee limitations for certain cards. Section 920(a)(7)(A) provides exemptions from the fee restrictions for general-use prepaid (and debit) cards provided to a consumer pursuant to government-administered payment programs and for certain general purpose reloadable prepaid cards. In addition, there is a blanket exemption from the interchange fee limitations for cards of issuers with total assets of less than $10 billion. EFTA section 920(a)(6). Thus, interchange fees for transactions made with these prepaid cards meeting the criteria for the statutory exemptions are generally not subject to the fee restrictions of EFTA section 920(a). However, EFTA section 920(a)(7)(B) provides that after July 21, 2012, interchange fees for transactions made with prepaid cards that receive the exemption set forth in EFTA section 920(a)(7)(A) are nonetheless limited by the Act's interchange fee restrictions if certain fees such as an overdraft fee may be charged with respect to the card. The exemption for interchange fees of cards of issuers with total assets below $10 billion is not subject to section 920(a)(7)(B). In July 2011, the Board promulgated Regulation II (12 CFR part 235) to implement EFTA section 920. The provisions regarding debit card interchange fee restrictions became effective as of October 1 of that year.[117]

5. FinCEN Rules

FinCEN also regulates prepaid products pursuant to its mission, which it describes as to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. As noted above, it has issued regulations to regulate certain prepaid products. In 2011, pursuant to a mandate under the Credit CARD Act, FinCEN published a final rule to amend BSA regulations applicable to money services businesses with respect to stored value or ''prepaid access'' (FinCEN's Prepaid Access Rule).[118] Subject to certain specific exemptions, a ''prepaid program'' is defined as an ''arrangement under which one or more persons acting together provide(s) prepaid access.'' 31 CFR 1010.100(ff)(4)(iii). The term ''prepaid access'' is defined as ''access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification.'' 31 CFR 1010.100(ww).

FinCEN's Prepaid Access Rule established a comprehensive approach toward regulating prepaid access. Among other things, the Rule requires each provider or seller of prepaid access to: (1) File suspicious activity reports; (2) collect and retain certain customer and transactional information; and (3) maintain an anti-money laundering program. These BSA requirements are similar to those that apply to other categories of money services businesses.[119]

6. State Laws

Many States have passed consumer protection laws or other rules to regulate prepaid products in general, and in particular, certain types of prepaid products such as government benefits cards. Illinois is an example of a State that has issued regulations applicable to prepaid products in general. In 2013, Illinois imposed pre-acquisition, on-card and at-the-time-of-purchase disclosure requirements on ''general-use reloadable prepaid cards.''[120] IL SB 1829 (2013), Public Act 098–0545, *codified at* 205 Ill. Comp. Stat. 616/10 and 616/46. California is an example of a State that has enacted laws on specific types of prepaid products. In 2013, California enacted a law that extended protections similar to the FMS Rule to prepaid products receiving unemployment benefits and basic-needs benefits from the State of California. CA A 1820 (2013), ch. 557, *codified at* Cal. Unemp. Ins. Code § 1339.1 and Cal. Welf. & Inst. Code § 11006.2. In 2014, California enacted another law extending similar protections to cards used for distribution of child support payments. CA A 2252 (2014), ch. 180, *codified at* Cal. Fam. Code § 17325.

Further, the Bureau understands that many States have money transmitter laws that may apply to prepaid product providers. The laws vary by State but generally require companies to be licensed and to post a surety bond to cover accountholder losses, if the providers become insolvent. Most States further require that the companies hold high-grade investments to back the money in customer accounts. However, the Bureau also understands that States vary in the amount of their oversight of companies licensed under the money transmitter laws, and many may not have streamlined processes to pay out funds in the event a prepaid product provider were to file for bankruptcy protection.[121]

C. Existing Regulation of Credit Products and Overdraft Services Offered in Connection With Transaction Accounts

In this rulemaking, the Bureau has considered whether and to what extent it should regulate credit features offered in connection with prepaid accounts. In approaching this question, the Bureau is conscious of the regulatory framework that has developed, including for credit products subject to Regulation Z and overdraft services on traditional deposit accounts that are exempt from Regulation Z but subject to certain parts of Regulation E. On several occasions, Federal regulators have addressed deposit account overdraft services in various rulemakings including those conducted pursuant to Regulations E and Z as well as in public guidance documents. The relevant actions are discussed below.

[117] 76 FR 43394 (July 20, 2011); 76 FR 43478 (July 20, 2011); *amended by* 77 FR 46258 (Aug. 3, 2012).

[118] 76 FR 45403 (July 29, 2011).

[119] 76 FR 45403, 45419 (July 29, 2011).

[120] The Illinois law defines ''general use reloadable card'' as:

[A] card, code, or other access device that is: (1) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount in exchange for payment; (2) issued under an agreement containing terms and conditions that permit funds to be added to the card, code, or other device after the initial purchase or issuance, including a temporary non-reloadable card issued solely in connection with a general use reloadable card, code, or other device; and (3) not marketed or labeled as a gift card or gift certificate; and (4) redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines.

205 ILCS 616/10.

[121] *See, e.g.,* Pew Charitable Trusts, *Imperfect Protection—Using Money Transmitter Laws to Insure Prepaid Cards* (Mar. 2013).

1. Open-End (Not Home-Secured) Credit Products Under the Truth in Lending Act and the Electronic Fund Transfer Act

Credit products are generally subject to the Truth in Lending Act and Regulation Z, although the application of specific provisions of the statute and regulation depends on the attributes of the particular credit product. In 1968, Congress enacted TILA to promote the informed use of consumer credit by requiring disclosures about its terms and cost and to provide standardized disclosures. Congress has revised TILA several times and its purpose now is to ''assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.'' 15 U.S.C. 1601(a). TILA thus defined credit broadly to mean the right granted by a creditor to a debtor to defer payment of debt or incur debt and defer its payment. 15 U.S.C. 1602(f).[122]

Congress has amended TILA on several occasions to provide consumers of certain types of credit products with additional protections. The Fair Credit Billing Act (FCBA),[123] enacted in 1974, added a number of substantive protections for consumers who use open-end credit [124] or use credit cards subject to TILA. Public Law 93–495 (Oct. 28, 1974). For example, the FCBA increased rights and remedies for consumers who assert billing errors and required a minimum 14-day grace period for payments for creditors that offer a grace period, prompt re-crediting of refunds, and refunds of credit balances. Credit cards are also subject to these requirements,[125] but also to a broad range of additional protections. Regulation Z defines the term ''credit card'' to mean any card, plate, or other single credit device that may be used from time to time to obtain credit. *See* § 1026.2(a)(15)(i). A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. *See* § 1026.2(a)(15)(iii). Cognizant that many financial institutions issue credit cards to cardholders with whom they also have a deposit account relationship, Congress in the FCBA also restricted the right of such institutions from taking funds out of a deposit account to satisfy their credit card claims.[126] In 1988, Congress amended TILA through the Fair Credit and Charge Card Disclosure Act. These revisions required issuers of credit cards and charge cards to provide certain disclosures at the time of application and solicitation.

In 2009, Congress enhanced protections for credit cards in the Credit CARD Act, which it enacted to ''establish fair and transparent practices related to the extension of credit'' in the credit card market.[127] The Credit CARD Act regulates both the underwriting and pricing of credit card accounts. Specifically, it prohibits credit card issuers from extending credit without assessing the consumer's ability to pay and imposes special rules regarding the extension of credit to persons under the age of 21 and to college students. The Credit CARD Act also restricts the fees that an issuer can charge during the first year after an account is opened, and limits the instances and the amount of such fees in which issuers can charge ''back-end'' penalty fees when a consumer makes a late payment or exceeds his or her credit limit. The CARD Act also restricts the circumstances under which issuers can increase interest rates on credit cards and establishes procedures for doing so. The Board generally implemented these provisions in subpart G of Regulation Z. Thus, while all open-end (not home-secured) credit plans receive some of TILA's protections, generally only open-end (not home-secured) credit plans that are accessed by credit cards receive the additional protections of the Credit CARD Act.

Although EFTA does not generally focus on credit issues, Congress provided one important protection in that statute as well. Known as the compulsory use provision, it provides that no person may ''condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers.'' EFTA section 913(1).[128] (A preauthorized electronic fund transfer is an electronic fund transfer authorized in advance to recur at substantially regular intervals, such as a recurring direct deposit or ACH debit.) Where applicable, the compulsory use provision thus prevents a creditor from requiring a particular form of payment, such as a recurring ACH debit to another account, as a form of repayment of the credit. This provides consumers with the ability to control how and when they repay credit and does not allow a creditor to insist on a particular form of repayment. Thus, as implemented in Regulations Z and E, some of these protections are broadly applicable to credit generally while others are specific to particular credit products. For example, open-end lines of credit that consumers can link to a deposit account to pull funds when the account has insufficient funds are subject to certain disclosure requirements under Regulation Z, certain provisions of the FCBA, and the compulsory use provision under Regulation E (although compulsory use exempts overdraft lines of credit).

2. Federal Regulatory Treatment of Deposit Account Overdraft Services

A separate regulatory regime has evolved over the years with regard to treatment of overdraft services, which started as courtesy programs under which financial institutions would decide on a manual, ad hoc basis to cover particular transactions for which a consumer lacked funds in their deposit account rather than to return the transactions and subject consumers to a

[122] The term creditor in Regulation Z generally means 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. *See* § 1026.2(a)(17)(i).

[123] Public Law 93–495, 88 Stat. 1511 (1974).

[124] As discussed in greater detail in the section-by-section analysis of § 1026.2(a)(20), open-end credit exists where there is a plan in which the creditor reasonably contemplates repeated transactions; the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available (even if not disclosed) to the extent that any outstanding balance is repaid. § 1026.2(a)(20). Closed-end credit is credit that does not meet the definition of open-end credit. § 1026.2(a)(10).

[125] Indeed, credit cards are subject to specialized and heightened disclosure requirements in advertisements, at the time of account opening, periodically for each billing cycle (*i.e.,* periodic statements), and when certain terms of the account change. In addition, for credit card accounts disclosures generally are required on or with applications or solicitations. Among the required disclosures for credit cards on or with an application or solicitation is a tabular disclosure setting forth seven different disclosures. § 1026.60. This ''Schumer box'' must be similar to model forms in Regulation Z appendix G–10 and must set forth certain fees, interest rates, transaction charges, and other required charges.

[126] *See Gardner* v. *Montgomery County Teachers Fed. Credit Union,* 864 F.Supp.2d (D. Md. 2012) (providing an overview of the FCBA's no offset provision).

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

[128] As implemented in Regulation E, § 1005.10(e)(1), this provision contains an exception for overdraft credit plans: ''No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.''

not-sufficient-funds (NSF) fee, merchant fees, and other negative consequences from bounced checks. Although Congress did not exempt overdraft services or similar programs offered in connection with deposit accounts from TILA, the Board in issuing Regulation Z in 1969 carved financial institutions' ''bounce-protection'' programs out of the new regulation.[129] *See, e.g.,* § 1026.4(c)(3) (excluding charges imposed by a financial institution for paying items that overdraw an account from the definition of ''finance charge,'' unless the payment of such items and the imposition of the charge were previously agreed upon in writing); § 1026.4(b)(2).[130] The Board distinguished between ''bounce protection programs'' where there is no written agreement to pay items that overdraw the account, and more formal, line-of-credit overdraft programs where there is a written agreement to pay overdrafts. Because financial institutions reserved discretion to pay particular overdrafts and exercised that discretion on an ad hoc basis, the Board exempted informal bounce protection programs but subjected overdraft lines of credit to Regulation Z when the creditor imposes a finance charge or the line of credit is accessed by a debit card.[131]

The Board revisited the exception of bounce protection programs from Regulation Z in 1981, in a rulemaking in which the Board implemented the Truth in Lending Simplification and Reform Act.[132] In the related proposal, the Board considered adjusting its overdraft exemption to apply only to ''inadvertent'' overdrafts because, the Board stated, a charge imposed for honoring an instrument under any agreement between the institution and the consumer is a charge imposed for a credit extension and thus fits the general definition of a finance charge, regardless of whether the charge and the honoring of the check are reflected in a written agreement.[133] Ultimately, however, the Board made only a ''few minor editorial changes'' to the exception in § 1026.4(c)(3) from the definition of finance charge that applied to fees for paying items that overdraw an account where there is no written agreement to pay, concluding that it would exclude from Regulation Z ''overdraft charges from the [definition of] finance charge unless there is an agreement in writing to pay items and impose a charge.'' [134]

The Board also took up the status of bounce protection programs in the early 1980s in connection with the enactment of EFTA. As noted above, EFTA's compulsory use provision generally prohibits financial institutions or other persons from conditioning the extension of credit on a consumer's repayment by means of preauthorized electronic fund transfers. The Board, however, exercised its EFTA section 904(c) exception authority to create an exception to the compulsory use provision for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account. *See* § 1005.10(e)(1). In adopting this exception, the Board aligned Regulation E with its approach to overdraft in Regulation Z—it exempted overdraft services from rules otherwise applicable to credit products. The Board stated that ''overdraft protection is a service that financial institutions have been providing to consumers at little or no extra cost beyond the cost of the protected account.'' [135]

Overdraft services in the 1990s began to evolve away from the historical model of bounce protection programs in a number of ways. One major industry change was a shift away from manual ad hoc decision-making by financial institution employees to a system involving heavy reliance on automated programs to process transactions and to make overdraft decisions. A second was to impose higher overdraft fees. In addition, broader changes in payment transaction types also increased the impacts of these other changes on overdraft services. In particular, debit card use expanded dramatically, and financial institutions began extending overdraft services to debit card transactions. In the 1990s, many institutions expanded transactional capabilities by replacing consumers' ATM-only cards with debit cards that consumers could use to make electronic payments to merchants and service providers directly from their checking accounts using the major payment networks (and thus most merchants could accept them).[136] As a result, debit card transaction volumes grew quickly as payment networks that enable these transactions broadened. Acceptance by grocery stores, gas stations, fast food restaurants, and other retailers helped to drive the popularity of debit card payments across regional and global ATM networks (accessed by using a PIN). By the late 1990s, ''signature debit'' transaction volumes became the most common type of debit card transaction.[137] These debit cards offered acceptance at all merchants that honored payments from the major payment networks, such as internet retailers.[138]

As a result of these operational changes, overdraft services became a significant source of revenue for banks and credit unions as the volume of transactions involving checking accounts increased due primarily to the growth of debit cards.[139] Before debit card use grew, overdraft fees on check and ATM transactions formed a greater portion of deposit account overdrafts. Debit card transactions presented consumers with markedly more opportunities to incur an overdraft fee when making a purchase because of increased acceptance and use of debit cards for relatively small transactions (*e.g.,* fast food and grocery stores).[140] Over time, revenue from overdraft increased and began to influence significantly the overall cost structure for many deposit accounts, as providers began relying heavily on back-end pricing while eliminating or reducing front-end pricing (*i.e.,* free checking accounts) as discussed above.[141]

[129] 34 FR 2002 (Feb. 11, 1969).

[130] Section 1026.4(b)(2) provides that any charge imposed on a checking or other transaction account is an example of a finance charge only to the extent that the charge exceeds the charge for a similar account without a credit feature.

[131] Later in the 1970s, the Board added provisions in Regulation Z specifically addressing credit cards. 40 FR 43200 (Sept. 19, 1975). The Board subsequently carved debit cards, where there is no agreement to extend credit, out of the definition of credit card. 46 FR 50288, 50293 (Oct. 9, 1981).

[132] Public Law 96–221, sec. 601, 94 Stat. 132; 45 FR 80648 (Dec. 5, 1980).

[133] *Id.* at 80657.

[134] 46 FR 20848, 20855 (Apr. 7, 1981).

[135] 46 FR 2972, 2973 (Jan. 13, 1981).

[136] *See* R. Borzekowski et al., *Consumers' Use of Debit Cards: Patterns, Preferences, and Price Response, at 2* (Apr. 2006) *available at http://www.federalreserve.gov/pubs/feds/2006/200616/200616pap.pdf* (noting that, as of 2006, ''Annual debit card transactions at the point of sale have been growing at over twenty percent per year since 1996 and now exceed credit card transactions.''). By 2006, debit card payment transaction volumes in the United States had exceeded both check and credit card payments, and from 2006 to 2011, the total volume of U.S. consumer debit card transactions nearly doubled.

[137] Fumiko Hayashi, Fed. Reserve Bank of Kansas City, *The New Debit Card Regulations: Initial Effects on Networks and Banks,* Econ. Rev., 4th quarter 2012, at 83 chart 2. With respect to ''signature debit'' transactions, a consumer does not use a PIN but instead typically signs a copy of a transaction receipt provided by the merchant in order to affirm the consumer's identity. For further information on the difference between signature-based and PIN-based card transactions, *see,* for example, the preamble of the Board's proposed rule to implement the Durbin amendment, 75 FR 81722, 81723 (Dec. 28, 2010).

[138] *See generally* CFPB Overdraft White Paper, at 11–17 (explaining growth of debit card transactions from consumers' deposit accounts) *available at http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf.*

[139] CFPB Overdraft White Paper, at 16.

[140] *See* CFPB Overdraft White Paper, at 11–12.

[141] *See id.,* at 16–17.

As a result of the growth of debit card transactions and the changing landscape of deposit account overdraft services, Federal banking regulators expressed increasing concern about consumer protection issues and began a series of issuances and rulemakings. First, in September 2001, the Office of the Comptroller of the Currency (OCC) released an interpretive letter expressing concern about overdraft protection services.[142] The letter noted that overdraft services are extensions of credit but that related fees may not be finance charges under Regulation Z. In declining to issue a ''comfort letter'' regarding an unnamed overdraft service, the OCC called attention to a number of troubling practices, including inadequate disclosure to consumers of the risk of harm from overdraft services and failure to properly help consumers who were using overdraft services as ''a means of meeting regular obligations'' to find more economical forms of credit.[143]

The Board also signaled concern with overdraft services in a number of rulemaking actions. In a 2002 proposal to amend Regulation Z with regard to the status of certain credit card-related fees and other issues, the Board noted that some overdraft services may not be all that different from overdraft lines of credit and requested comment on whether and how Regulation Z should be applied to banks' bounce-protection services, in light of the Regulation's exclusion of such services but inclusion of lines-of-credit where a finance charge is imposed or is accessed by a debit card.[144] The Board did not modify the Regulation Z exemptions when it issued final rules in 2003,[145] but proposed revisions to Regulation DD (which implements the Truth in Savings Act) and its commentary in 2004 to address concerns about the uniformity and adequacy of institutions' disclosure of overdraft fees generally and to address concerns about advertised automated overdraft services in particular.[146] The Board specifically noted that it was not proposing to cover overdraft services under TILA and Regulation Z, but that further consideration of the need for such coverage would be appropriate if consumer protection concerns about these overdraft services were to persist in the future.[147] When the Board finalized the Regulation DD proposal in 2005, it noted that it declined at that time to extend Regulation Z to overdraft services. In doing so, it noted that industry commenters were concerned about the cost of imposing Regulation Z requirements on deposit accounts and about the compliance burden of providing an APR calculated based on overdraft fees without corresponding benefits to consumers in better understanding the costs of credit. The Board also noted that some members of its Consumer Advisory Council believed that overdraft services are the functional equivalent of a traditional overdraft line of credit and thus should be subject to Regulation Z, but that financial institutions' historical practice of paying occasional overdrafts on an ad hoc basis should not be covered by Regulation Z. While not specifically addressing these concerns, the Board emphasized that its decision not to apply Regulation Z did not preclude future consideration regarding whether it was appropriate to extend Regulation Z to overdraft services.[148]

In February 2005 (prior to the Board having finalized the Regulation DD changes discussed above), the Federal banking agencies also issued joint guidance on overdraft programs in response to the increased availability and customer use of overdraft services (Joint Guidance).[149] The purpose of the Joint Guidance was to assist insured depository institutions in the responsible disclosure and administration of overdraft protection services. It grew out of concern that

> [D]isclosure, and implementation of some overdraft protection programs, intended essentially as short-term credit facilities, are of concern [to the Federal banking agencies]. For example, some institutions have promoted this credit service in a manner that leads consumers to believe that it is a line of credit by informing consumers that their account includes an overdraft protection limit of a specified dollar amount without clearly disclosing the terms and conditions of the service, including how fees reduce overdraft protection dollar limits, and how the service differs from a line of credit.[150]

The Joint Guidance stated that ''the existing regulatory exceptions [*i.e.,* exceptions in Regulation Z such that the Regulation does not apply] were created for the occasional payment of overdrafts, and as such could be reevaluated by the Board in the future, if necessary. Were the Board to address these issues more specifically, it would do so separately under its clear [TILA] authority.'' [151] The Joint Guidance went on to state that ''[w]hen overdrafts are paid, credit is extended. Overdraft protection programs may expose an institution to more credit risk (*e.g.,* higher delinquencies and losses) than overdraft lines of credit and other traditional overdraft protection options to the extent these programs lack individual account underwriting.'' [152] This guidance remains in effect.

In the late 2000s as controversy regarding overdraft services continued to mount despite the increase in regulatory activity, Federal agencies began exploring various additional measures with regard to overdraft, including whether to require that consumers affirmatively opt in before being charged for overdraft services. First, in May 2008, the Board along with the National Credit Union Administration and the former Office of Thrift Supervision proposed to exercise their authority under section 5 of the Federal Trade Commission Act (FTC Act) [153] to prohibit institutions from assessing any fees on a consumer's account in connection with an overdraft service, unless the consumer was given notice and the right to opt out of the service, and the consumer did not opt out.[154] At the same time, the Board issued a proposal under Regulation DD to expand disclosure requirements and revise periodic statement requirements to provide aggregate totals for overdraft fees and for returned item fees for the periodic statement period and year-to-date.[155] The Board finalized portions of

[142] Office of the Comptroller of Currency, Interpretive Letter No. 914, *3rd Party Program,* (Aug. 3, 2001) *available at http://www.occ.gov/static/interpretations-and-precedents/sep01/int914.pdf.*

[143] OCC Interpretive Letter No. 914.

[144] 67 FR 72618, 72620 (Dec. 6, 2002).

[145] The March 2003 final rule preamble stated that ''[t]he Board's staff is continuing to gather information on these services, which are not addressed in the final rule.'' 68 FR 16185 (Apr. 3, 2003).

[146] 69 FR 31760 (June 7, 2004).

[147] *Id.* at 31761.

[148] 70 FR 29582, 29584–85 (May 24, 2005). In this 2005 rulemaking, the Board revised Regulation DD to address concerns about the uniformity and adequacy of information provided to consumers when they overdraw their deposit accounts. Among other things, the final rule required institutions that promote the payment of overdrafts in an advertisement to disclose on periodic statements, total fees imposed for paying overdrafts and total fees imposed for returning items unpaid on periodic statements, both for the statement period and the calendar year to date, and to include certain other disclosures in advertisements of overdraft services. Ultimately, in 2009, the Board expanded this provision to all institutions not just those that promote the payments of overdrafts. *See* 74 FR 5584 (Jan. 29, 2009).

[149] 70 FR 9127 (Feb. 24, 2005) (Joint Guidance) *available at http://www.gpo.gov/fdsys/pkg/FR-2005-02-24/pdf/05-3499.pdf. See also* Office of Thrift Supervision Guidance on Overdraft Protection Programs, 70 FR 8428 (Feb. 18, 2005).

[150] 70 FR 9127, 9129 (Feb. 24, 2005).

[151] *Id.* at 9128.

[152] *Id.*

[153] Section 5 of the FTC Act prohibits ''unfair or deceptive acts or practices in or affecting commerce.'' 15 U.S.C. 45. *See also* Federal Deposit Ins. Act section 8 (extending to the Board authority to take appropriate action when unfair or deceptive acts or practices are discovered). 12 U.S.C. 1818.

[154] 73 FR 28904 (May 19, 2008).

[155] 73 FR 28730 (May 19, 2008).

the Regulation DD proposal in January 2009.[156] In addition, although the three agencies did not finalize their FTC Act proposal, the Board ultimately adopted a similar opt-in requirement for ATM and point of sale transactions under Regulation E in late 2009.

The overdraft opt-in rule in Regulation E applies to all accounts covered by Regulation E, including payroll card accounts. In addressing overdraft services for the first time as a feature of deposit accounts in Regulation E,[157] the Board concluded that the opt-in rule carried out ''the express purposes of EFTA by: (a) Establishing notice requirements to help consumers better understand the cost of overdraft services for certain EFTs; and (b) providing consumers with a choice as to whether they want overdraft services for ATM and one-time debit card transactions in light of the costs associated with those services.'' [158] Not surprisingly, the rule did not expressly discuss GPR cards, which as noted above, the Board had not subjected to Regulation E coverage.[159]

Following the adoption of the Board's overdraft opt-in-rule, the FDIC expanded on the previously-issued Joint Guidance when it issued a Financial Institution Letter that reaffirmed its existing supervisory expectations with respect to overdraft payment programs generally and provided specific guidance with respect to automated overdraft payment programs.[160] In 2011, the OCC proposed similar guidance regarding automatic overdraft programs and deposit advance products. This guidance, if finalized, would have clarified the OCC's application of principles of safe and sound banking practices in connection with deposit-related consumer credit products such as automated overdraft services and direct deposit advance programs.[161] The OCC withdrew this proposed guidance in 2013.[162]

Since the Bureau assumed authority from the Board for implementing most of EFTA in 2011, it has taken a number of steps—including research, analysis, and solicitation of comment—to assess the impact and efficacy of the Board's 2009 overdraft opt-in rule as it pertains to deposit accounts. In early 2012, the Bureau issued a Request For Information (RFI) that sought input from the public on a number of overdraft topics, including: Lower cost alternatives to overdraft protection programs, consumer alerts and information provided regarding balances and overdraft triggers, the impact of changes to Regulations DD and E and overdraft opt-in rates, the impact of changes in financial institutions' operating policies, the economics of overdraft programs, and the long-term impact on consumers.[163] In response, the Bureau received over 1000 comments. This RFI did not request information specific to prepaid products, and few commenters specifically addressed prepaid products. The Bureau has also undertaken significant research into overdraft services that has resulted, to date, in the release of a white paper of initial data findings in June 2013 and a data point in July 2014.[164]

The Bureau has previously indicated that it is considering whether rules governing overdraft and related services in connection with deposit accounts are warranted, and, if so, what types of rules would be appropriate. A possible rulemaking might include new or revised disclosures or address specific acts or practices.[165]

3. Other Relevant Federal Regulatory Activity

In addition to the two general regulatory regimes governing credit products generally and overdraft services as outlined above, two Federal initiatives have specifically addressed the possibility of credit features being offered in connection with prepaid products. First, the Treasury FMS Rule (described above), adopted in late December 2011, only permits Federal payments to be deposited onto a prepaid product if the product is not attached to a line of credit or loan agreement under which repayment from the account is triggered upon delivery of the Federal payments, among other conditions. *See* 31 CFR 210.5(b)(5)(i)(C). The Supplementary Information to that Interim Final Rule indicates that the goal of this requirement is to prevent payday lending and other arrangements in which a financial institution or creditor ''advances'' funds to a cardholder's account, and then repays itself for the advance and any related fees by taking some or all of the cardholder's next deposit.[166] The Treasury FMS Rule does not, however, directly address the permissibility of overdraft services.

Second, as is discussed above in the broader regulatory overview, the Board's Regulation II implementing provisions of the Dodd-Frank Act generally caps interchange fees that may be imposed on debit cards. However, Regulation II provides exemptions from the fee restrictions for certain GPR cards; as a result, interchange fees for transactions made with these prepaid cards are generally not subject to the fee restrictions of EFTA section 920(a). 12 CFR 235.5(d)(1). However, EFTA, as amended by the Dodd-Frank Act, carves out of this exemption interchange fees for transactions made with these prepaid cards if, with respect to the card, an overdraft fee may be charged. EFTA and Regulation E provide a separate, blanket exemption for cards or issuers with assets of less than $10 billion, so these cards are not subject to the fee restrictions even if overdraft fees may be charged on the account.

Separately, the Department of Defense (the Department) recently proposed amendments to its regulation (32 CFR part 232) that implements the Military Lending Act (MLA), 10 U.S.C. 987, *et se.*[167] Under the MLA, a creditor generally may not apply a military annual percentage rate (MAPR) greater than 36 percent in connection with an extension of consumer credit to a military service member or dependent. 10 U.S.C. 987(b). The Department's proposal would modify its regulation to expand the scope of coverage to which the regulation applies to a broad range of open-end and closed end credit products, but would exclude overdraft services that are exempted from Regulation Z as discussed above.[168] For open-end (not home secured) credit card accounts, any credit-related charge that is a finance charge under Regulation Z (as well as certain other charges) would be included in calculating the MAPR [169] for a particular billing cycle and the MAPR for that billing cycle could not

[156] 74 FR 5584 (Jan. 29, 2009). Specifically, this rule required, among other things, all depository institutions to disclose aggregate overdraft fees on periodic statements, and not solely institutions that promote the payment of overdrafts.

[157] 74 FR 59033 (Nov. 17, 2009).

[158] *Id.* at 59037.

[159] *Id.* at 59040.

[160] Fed. Deposit Ins. Corp., Fin. Inst. Letter FIL–81–2010, *Overdraft Payment Programs and Consumer Protection Final Overdraft Payment Supervisory Guidance,* (Nov. 24, 2010) (FDIC Overdraft Payment Supervisory Guidance), *available at https://www.fdic.gov/news/news/financial/2010/fil10081.html.*

[161] 76 FR 33409 (June 8, 2011).

[162] 78 FR 25353 (Apr. 30, 2013).

[163] 77 FR 12031 (Feb. 28, 2012).

[164] CFPB Overdraft White Paper, *available at http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf.;* CFPB Overdraft Data Point, available at *http://www.consumerfinance.gov/reports/data-point-checking-account-overdraft/.*

[165] *See http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201404&RIN=3170-AA42.*

[166] 75 FR 80335 (Dec. 22, 2010).

[167] 79 FR 58602 (Sept. 29, 2014).

[168] 79 FR 58602 at 58616.

[169] 79 FR 58602 at 58610.

exceed 36 percent.[170] For such credit card accounts, the Department's proposal, however, provides that a card issuer does not have to include in the calculation of the MAPR any charge that is a bona fide fee and that is reasonable and customary for that type of fee.[171]

D. The Bureau's May 2012 Advance Notice of Proposed Rulemaking

As noted above, the Bureau issued the Prepaid ANPR, which posed a series of questions for public comment about how the Bureau might consider regulating GPR cards. The Bureau sought input on the following topics: (1) The disclosure of fees and terms; (2) if consumers should be informed whether their funds are protected by FDIC pass-through deposit insurance; (3) unauthorized transactions and the costs and benefits of requiring card issuers to provide limited liability protection from unauthorized transactions similar to those protections available for other accounts under Regulation E; and (4) other product features including credit features in general and overdraft services in particular, linked savings accounts, and credit repair or credit building features such as features that claim to offer consumers the opportunity to improve or build credit).

The Bureau received over 220 comments from a variety of commenters.[172] Industry commenters, including depository institutions and credit unions, prepaid program managers, payment networks and industry trade associations, submitted the majority of comments. The Bureau also received comment letters from consumer and other interest groups, as well as several individual consumers. In preparing this notice, the Bureau has evaluated the comments received in response to the Prepaid ANPR and has engaged in additional analysis of prepaid products and consumer behavior. As discussed in greater detail in the section-by-section analysis below, the proposal covers a variety of prepaid products including GPR cards. The Bureau notes that covered account types have different characteristics.

E. Other Payments-Related Bureau Actions

In June 2014, the Bureau issued a Request for Information regarding the opportunities and challenges associated with the use of mobile financial products and services (Mobile RFI).[173] As part of the Mobile RFI, the Bureau is exploring how mobile technologies are impacting economically vulnerable consumers with limited access to traditional banking systems. The Mobile RFI asked questions on a number of topics, including access for economically vulnerable consumers and the ways that mobile technologies could expand access to financial services, the use of mobile technologies for real-time money management, the types of customer service or technical assistance that are available to consumers when they use mobile products, and privacy and data security issues. The comment period on the Mobile RFI ended on September 10, 2014. The Bureau received approximately 48 comments, which it is in the process of reviewing.

In July 2014, the Bureau began accepting consumer complaints about prepaid products.[174] In addition to prepaid cards, consumers may also submit complaints about payroll cards, government benefit cards, gift cards, and mobile wallets.[175] In August 2014, the Bureau issued a consumer advisory on virtual currencies that discussed the risks to consumers posed by such currencies.[176] At the same time, the Bureau also began accepting consumer complaints regarding virtual currencies.[177]

The section-by-section analysis below discusses in greater detail the potential application of this proposed rule to certain mobile financial products and services. The Bureau also recognizes that the proposed rule may have potential application to virtual currency and related products and services. As a general matter, however, the Bureau's analysis of mobile financial products and services, as well as and virtual currencies and related products and services, including the applicability of existing regulations and this proposed regulation to such products and services, is ongoing.

III. Overview of Outreach and Related Industry and Consumer Research

The Bureau conducted extensive and significant additional outreach and research since it issued the Prepaid ANPR as part of its efforts to study and evaluate prepaid products. In addition to reviewing the comments received, the Bureau has engaged in a variety of outreach and other research efforts to understand better how consumers use prepaid products and where problems might exist or potentially develop. These efforts include meetings with industry, consumer groups, and non-partisan research and advocacy organizations, market research and monitoring, and related efforts. Relatedly, the Bureau has collected information from industry participants pursuant to section 1022(c)(4) of the Dodd-Frank Act, which allows the Bureau to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers to aid its market monitoring efforts.

Further, as discussed in greater detail below, the Bureau conducted qualitative testing of prototype disclosure forms with consumers who use prepaid cards and reviewed numerous prepaid products' terms and conditions. The Bureau sought to determine current industry practices in a number of areas to inform its understanding of the potential costs and benefits of extending various Regulation E provisions to prepaid accounts. As described in greater detail below, Bureau staff conducted a study of publicly-available account agreements for prepaid products that appear to meet the Bureau's proposed definition of the term ''prepaid account.''

A. Focus Groups and Consumer Testing

As noted above, in formulating this notice, the Bureau engaged a third-party vendor, ICF International (ICF), to coordinate qualitative consumer testing consisting of informal focus groups and one-on-one interviews. The Bureau sought to gain insight about how and why consumers use prepaid cards (including GPR and payroll cards), as well as to see how they interact with prototype forms developed by the Bureau. Under direction from the Bureau, ICF facilitated four focus groups in December 2013 to gather in-depth

[170] 79 FR 58602 at 58619.

[171] 79 FR 58602 at 58638. *See* proposed § 232.4(d) of the Department's proposal. The exclusion from the MAPR calculation for bona fide fees does not apply to periodic rates. It also does not apply to any credit insurance premium, including charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements, or to any fees for credit related ancillary products sold in connection with and either at or before consummation of the credit transaction or upon account opening, because those charges are expressly included in the definition of ''interest'' in the applicable statute (10 U.S.C. 987(i)(3)) and therefore must be included in the MAPR calculation.

[172] The comments can be reviewed at *http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0019-0001.*

[173] 79 FR 33731 (June 12, 2014).

[174] Press Release, *CFPB Begins Accepting Consumer Complaints on Prepaid Cards and Additional Nonbank Products, available at http://www.consumerfinance.gov/newsroom/cfpb-begins-accepting-consumer-complaints-on-prepaid-cards-and-additional-nonbank-products./.*

[175] *See http://www.consumerfinance.gov/complaint/#credit-card.*

[176] CFPB Consumer Advisory, *Risks to Consumers Posed by Virtual Currencies* (Aug. 2014), *available at http://files.consumerfinance.gov/f/201408_cfpb_consumer-advisory_virtual-currencies.pdf.*

[177] *See http://www.consumerfinance.gov/complaint/#money-transfer.*

information about how consumer shop for prepaid cards and factors they consider when acquiring such products. Each focus group lasted approximately ninety minutes, included eight to ten participants, and was held in Bethesda, Maryland. In early 2014, ICF facilitated three rounds of one-on-one interviews, each lasting approximately 60 to 75 minutes, in Baltimore, Maryland; Los Angeles, California; and Kansas City, Missouri. Each round included nine or ten participants. In conjunction with the release of this notice, the Bureau is making available a report prepared by ICF regarding the focus groups and consumer testing (ICF Report).[178] The testing and focus groups were conducted in accordance with OMB Control Number 3170–0022.

A total of sixty-nine consumers representing a range of ages, races, and education levels participated in the focus groups and individual interviews.[179] Specifically, 40 consumers participated in the focus groups, and 29 consumers participated in the interviews. All testing was conducted in English, but both the focus groups and individual interviews included native speakers of languages other than English. All participants self-identified as having used a prepaid card in the previous six months (for focus group participants) or 12 months (for interview participants).[180] Several participants had payroll cards in addition to or in lieu of GPR cards.

Participants reported that they used prepaid cards for a variety of reasons. While some participants reported using, as applicable, a GPR card or payroll card, in lieu of a deposit account, others reported that they also had a deposit account and used their prepaid cards only occasionally. Still others specifically mentioned using their cards primarily for online purchases. These participants expressed the belief that prepaid cards addressed some of their privacy and security concerns, in that cards could remain anonymous and cardholders could not lose more funds than what they loaded onto the card. Some participants, particularly those that did not have deposit accounts, described prior bad experiences with banks in general and overdraft fees on checking accounts in particular, in explaining why they chose to use a prepaid card.

Focus group findings highlights. Few focus group participants reported doing any formal comparison shopping before purchasing a prepaid card in a retail store. Further, while some participants who had purchased their cards online reported doing more research about different cards' terms and conditions pre-purchase, they, too, rarely engaged in systematic comparison shopping. Most participants reported that they were very aware of the fees associated with their current prepaid card, but few reported understanding all of the fees when they purchased their prepaid cards. Instead, most reported learning about a card's fees post-acquisition after unknowingly incurring certain fees and seeing that the fees were deducted from their card balance. When asked about which fees were most important to them, almost all participants cited one of the following fees: (1) Monthly maintenance fees; (2) per purchase fees; (3) ATM withdrawal fees; and (4) cash reload fees. ICF also asked participants to share their thoughts about how easily they could understand the information included in on-package disclosures from two existing prepaid cards (brand names redacted). Comprehension varied. Many participants overlooked any asterisks included on these disclosures to explain how fees may be assessed or how fees differ from what was disclosed. Participants were also confused about whether the disclosures provided a comprehensive overview of all potential fees.

Based on the observations from and information gathered in focus groups and the Bureau's outreach more generally, the Bureau and ICF developed several prototype disclosure forms to test with participants in the individual interview segment of the consumer testing. The Bureau and ICF focused mainly on designing and testing ''short form'' disclosures that would highlight key information about a hypothetical prepaid product in a format that would be easy to understand, yet small enough to fit on existing packaging material used to market prepaid products on J-hooks in retail stores.[181] The Bureau and ICF developed short form prototypes that would accommodate prepaid products that have a single service plan and prototypes for products that have multiple service plans. A ''long form'' prototype form that included all of the hypothetical prepaid product's fees was also developed.

Individual interviews findings highlights. ICF asked participants questions to assess how well they were able to comprehend the fees and other information included on prototype forms. In some cases, ICF asked participants to engage in shopping exercises to compare fee information printed on different prototype forms. After each round of testing, ICF analyzed and briefed the Bureau on the results of testing. The Bureau used this feedback to make changes, as necessary, to the form design for the following round of testing.

In the first round of testing, the Bureau focused on testing a variety of prototype short form disclosures. Specifically, the Bureau tested short forms that: (1) Included a ''top-line'' of four fees displayed more prominently than the other fees; (2) grouped similar fees by category; or (3) listed fees without including either the top-line or categories. Generally, participants were able to understand the basic fee information presented in all of the prototype disclosure forms. However, many participants expressed a desire for a form that is both easy to read and that prominently displays the most important fee information. These participants also expressed that they felt that prototype forms that included a ''top line'' disclosure of certain fees accomplished these objectives.

Another design issue on which the Bureau and ICF focused was whether and how to develop a form that might not include all of a prepaid product's fees and full explanations of the conditions under which those fees could be imposed. In other words, the Bureau used testing to determine how to best present a subset of key information about a prepaid product in the short form disclosure, while effectively indicating to consumers that additional information not included on the form was also available. The first round's prototype forms included multiple asterisks to indicate additional information was available for fees that could vary in amount. Many participants, however, did not notice the text associated with the asterisks or struggled to accurately identify which symbol was associated with which fee.

In an attempt to improve comprehension, the Bureau introduced forms in the second round of testing that only included a single symbol and explanatory sentence to indicate all of the fees that might vary on the form. This modification appeared to increase the frequency with which participants

[178] For a detailed discussion of the Bureau's consumer testing, *see* ICF Report, *available at http://files.consumerfinance.gov/f/201411_cfpb_summary-findings-design-testing-prepaid-card-disclosures.pdf.*

[179] For a detailed discussion of the methodology used in the consumer testing, including participant selection, *see* ICF Report, at 2–4.

[180] Based on oral responses, it appeared that perhaps one out of the forty focus group participants may have only used a gift card and not a GPR or payroll card. *See* ICF Report, at 4.

[181] The Bureau notes, however, that under the proposal, the short form would be disclosed in all acquisition scenarios, not just retail stores. *See* section-by-section analysis of § 1005.18(b), below.

noticed the language associated with the symbol, and thus, the frequency which participants noticed that fees could vary also increased. In the third round of testing, in addition to reviewing additional short form prototypes, participants engaged in a shopping exercise with a prototype long form disclosure to compare the relative utility of the short form and long form disclosures.

Before the second round of testing, the Bureau also posted a blog on its Web site that included two of the prototype short form designs used during the second round of testing in Los Angeles.[182] The Bureau invited the public to provide impressions of the prototypes and suggest how the Bureau could improve their design and submit their feedback through comments directly on the blog, by sending an email, or through posting a message to the Bureau via social media. The Bureau received over 80 comments from industry, consumer advocacy groups and individual consumers, in addition to email submissions and other correspondence. These comments informed the Bureau's form design process for the third round of testing as well as the model forms.

B. Study of Prepaid Product Features

In order to better understand existing compliance with Regulation E and other features and protections currently offered by prepaid products, the Bureau conducted a study of publicly-available account agreements for prepaid products that appear to meet the Bureau's proposed definition of the term ''prepaid account'' (Study of Prepaid Account Agreements).[183] Specifically, the Bureau sought to determine current industry practices in a number of areas to inform its understanding of the potential costs and benefits of extending various Regulation E provisions to prepaid accounts. Bureau staff examined certain key provisions in the account agreements of prepaid cards and other similar prepaid programs currently available to consumers and compared those terms against one another and, for some provisions, against the protections presently provided by Regulation E for payroll card accounts and cards used for the distribution of certain government benefits[184] (and, by virtue the FMS Rule, to other prepaid cards receiving Federal payments as well).

The Study of Prepaid Account Agreements covers 325 publicly-available account agreements for prepaid programs that, the Bureau believes, could be subject to the definition of prepaid account set forth in this proposal.[185] The analysis includes agreements for GPR card programs (including GPR cards marketed for specific purposes, such as travel or receipt of tax refunds, or for specific users, such as teenagers or students), as well as payroll cards, cards used for the distribution of certain government benefits, and similar card programs were included. Agreements for prepaid programs specifically used for P2P transfers that appeared to be encompassed by the proposed definition of prepaid account were also included. Gift, incentive and rebate card programs, health spending account and flexible spending account programs, and needs-tested State and local government benefit card programs were not included in the analysis, as the Bureau is proposing to exclude such products from this proposed rulemaking. While the Bureau collected a large number of agreements, it cautions that this collection is neither comprehensive or nor complete. The Bureau only included programs for which agreements were readily available online. In addition, there does not currently exist any comprehensive listing of prepaid card issuers, program managers, or programs against which the Bureau could compare the completeness of its analysis.

The Study of Prepaid Account Agreements examines key provisions regarding error resolution protections (including provisional credit); limited liability protections; access to account information; overdraft and treatment of negative balances and declined transaction fees; FDIC (or NCUSIF) pass-through deposit (or share) insurance; and general disclosure of fees. Where relevant, results of the analysis are discussed in the section-by-section analysis below. The Study of Prepaid Account Agreements is being published concurrently with this notice. It explains how Bureau staff identified publicly available prepaid account agreements online for inclusion in the analysis. It also discusses the Bureau's methodology, key assumptions, observations, and findings for each category of review. The Bureau cautions that its analysis is, in many ways, subjective and thus is not intended to be relied upon as an assessment of any legal issue including whether a prepaid program actually complies with Regulation E's existing provisions governing payroll card accounts or cards used for the distribution of certain government benefits, the FMS Rule, or this proposed rule.

IV. Legal Authority

A. Electronic Fund Transfer Act

EFTA section 902 establishes that the purpose of the statute is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems but that its primary objective is the provision of individual consumer rights. Among other things, EFTA contains provisions regarding disclosures made at the time a consumer contracts for an electronic fund transfer service (EFTA section 905(a)), notices of certain changes to account terms or conditions (EFTA section 905(b)), provision of written documentation to consumers regarding electronic fund transfers (EFTA section 906), error resolution (EFTA section 908), consumers' and financial institutions' liability for unauthorized electronic fund transfers (EFTA sections 909 and 910), and compulsory use of electronic fund transfers (EFTA section 913). With respect to disclosures provided prior to opening an account, EFTA section 905(a) states that the terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau. It also establishes that the Bureau shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of EFTA section 905 and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. As discussed in more detail below, proposed revisions to § 1005.18(b) (pre-acquisition disclosure requirements) are proposed pursuant to the Bureau's disclosure authority under EFTA section 905, and its adjustments and exceptions authority under EFTA section 904.

As amended by the Dodd-Frank Act, EFTA section 904(a) authorizes the Bureau to prescribe regulations

[182] Eric Goldberg, *Prepaid cards: Help design a new disclosure,* CFPB Blog Post, (Mar.18, 2014), *http://www.consumerfinance.gov/blog/prepaid-cards-help-design-a-new-disclosure/.*

[183] *Available at http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf.*

[184] *See* existing §§ 1005.18 and 1005.15, respectively.

[185] The Bureau does not intend for a program's inclusion in or exclusion from the Study of Prepaid Account Agreements to be a determination as to whether this proposed rule would or would not apply to that prepaid account program.

necessary to carry out the purposes of EFTA. As noted above, the express purposes of EFTA, are to establish ''the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems'' and to provide ''individual consumer rights.'' EFTA section 902(b). EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain such classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions, for any class of electronic fund transfers or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion, or to facilitate compliance. The Senate Report accompanying EFTA noted that regulations are ''essential to the act's effectiveness'' and ''[permit] the [Bureau] to modify the act's requirements to suit the characteristics of individual EFT services. Moreover, since no one can foresee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply.'' [186] For reasons discussed in this notice, the Bureau is proposing amendments to Regulation E with respect to prepaid accounts that may offer an overdraft service or credit feature pursuant to the Bureau's authority under, as applicable, sections 904(a) and (c).

B. Section 1022 of the Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' Among other statutes, title X of the Dodd-Frank Act, EFTA, and TILA are Federal consumer financial laws.[187] Accordingly, in adopting this final rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under EFTA, TILA, and title X that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1). *See* Section 1022(b) Analysis below for a discussion of the Bureau's standards for rulemaking under Dodd-Frank Act section 1022(b)(2).

Dodd-Frank Act section 1022(c)(1) provides that, to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services. The Bureau may make public such information obtained by the Bureau under this section as is in the public interest. Dodd-Frank Act section 1022(c)(3). Moreover, section 1022(c)(4) provides that, in conducting such monitoring or assessments, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers. Proposed § 1005.19 is proposed pursuant to the Bureau's authority under Dodd-Frank sections 1022(c) and 1032(a), as well as its authority under EFTA sections 904 and 905. As discussed in the section-by-section analysis below, proposed § 1005.19 would mandate the collection of and posting by the Bureau of prepaid account terms and conditions and posting on a Bureau-maintained Web site. It would also require that financial institutions disclose such terms and conditions.

C. Section 1032 of the Dodd-Frank Act

Section 1032(a) of the Dodd-Frank Act provides that the Bureau ''may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.'' The authority granted to the Bureau in section 1032(a) is broad, and empowers the Bureau to prescribe rules regarding the disclosure of the ''features'' of consumer financial products and services generally. Accordingly, the Bureau may prescribe disclosure requirements in rules regarding particular features even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau ''shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.'' Accordingly, in developing the proposed rule under Dodd-Frank Act section 1032(a), the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. Moreover, the Bureau has considered the evidence developed through its consumer testing of the model forms as discussed above and in the ICF Report.

In addition, Dodd-Frank Act section 1032(b)(1) provides that ''any final rule prescribed by the Bureau under [section 1032] requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.'' Any model form issued pursuant to that authority shall contain a clear and conspicuous disclosure that, at a minimum, uses plain language that is comprehensible to consumers, contains a clear format and design, such as an easily readable type font, and succinctly explains the information that must be communicated to the consumer. Dodd-Frank Act section 1032(b)(2). As discussed in more detail below, certain portions of the proposed rule are proposed pursuant to the Bureau's disclosure authority under Dodd-Frank section 1032(a).

D. The Truth in Lending Act

As discussed above, TILA is a Federal consumer financial law. In adopting TILA, Congress explained that:

> [E]conomic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.[188]

TILA and Regulation Z define credit broadly as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. TILA section 103(f); 15 U.S.C. 1602(f); 12 CFR 1026.2(a)(14); 15 U.S.C. 1602(f). TILA and Regulation Z set forth disclosure and other requirements that apply to creditors. Different rules apply to creditors depending on whether they are extending ''open-end credit'' or ''closed-end credit.'' Under the statute and Regulation Z, open-end credit exists

[186] *See* S. Rept. No. 95–1273, at 26 (Oct. 4, 1978).

[187] Dodd-Frank Act section 1002(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12) (defining ''enumerated consumer laws'' to include TILA and EFTA).

[188] TILA section 102(a); 15 U.S.C. 1601(a).

where there is a plan in which the creditor reasonably contemplates repeated transactions; the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. § 1026.2(a)(20). Typically, closed-end credit is credit that does not meet the definition of open-end credit. § 1026.2(a)(10).

The term ''creditor'' generally means 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. *See* TILA section 103(g); 15 U.S.C. 1602(g); 12 CFR 1026.2(a)(17)(i). TILA defines finance charge broadly as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. TILA section 106(a); 12 U.S.C. 1605(a); *see* 12 CFR 1026.4.

The term ''creditor'' also includes a card issuer, which is a person or it's agent that issues credit cards, when that person extends credit accessed by the credit card. *See* § 1026.2(a)(17)(iii) and (iv); TILA section 103(g); 15 U.S.C. 1602(g). Regulation Z defines the term ''credit card'' to mean any card, plate, or other single credit device that may be used from time to time to obtain credit. *See* § 1026.2(a)(15). A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. *See* § 1026.2(a)(15)(iii). In addition to being creditors under TILA and Regulation Z, card issuers also generally must comply with the credit card rules set forth in the FCBA and in the Credit CARD Act (if the card accesses an open-end credit plan), as implemented in Regulation Z subparts B and G. *See generally* §§ 1026.5(b)(2)(ii), .7(b)(11), .12 and .51–.60.

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a), 15 U.S.C. 1604(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. As discussed above, pursuant to TILA section 102(a), a purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' Moreover, this stated purpose is tied to Congress' finding that ''economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit[.]'' TILA section 102(a). Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. However, Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain ''additional requirements'' that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the authority to exercise TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). Accordingly, as amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129 that apply to the high-cost mortgages referred to in TILA section 103(bb), 15 U.S.C. 1602(bb).

For the reasons discussed in this notice, the Bureau is proposing amendments to Regulation Z with respect to certain prepaid accounts that are associated with overdraft services or credit features to carry out TILA's purposes and is proposing such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance. In developing these aspects of the proposal pursuant to its authority under TILA section 105(a), the Bureau has considered the purposes of TILA, including ensuring meaningful disclosures, facilitating consumers' ability to compare credit terms, and helping consumers avoid the uninformed use of credit, and the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization.

V. Section-by-Section Analysis of the Proposed Rule

Regulation E

Subpart A—General

Section 1005.2 Definitions

2(b) Account

Section 1005.2(b)(1) defines an ''account'' for purposes of Regulation E as a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes. As discussed above, the Board in 2006 added a definition for ''payroll card account'' to the definition of account in Regulation E. Under the current regulation, a payroll card account is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person. § 1005.2(b)(2). EFTA and Regulation E currently apply to payroll card accounts, except as provided in existing § 1005.18. Similar exceptions and other provisions specific to accounts used for the distribution of government benefits are in existing § 1005.15. Gift cards, although not included in the § 1005.2(b) definition of account, are addressed in § 1005.20.

The Board, in adopting rules to include payroll card accounts within the ambit of Regulation E, explicitly acknowledged that Regulation E did not, at that time, cover general spending cards to which a consumer might transfer by direct deposit some portion of the consumer's wages.[189] As a result, some regulators, the prepaid industry, and others have thus interpreted Regulation E not to apply to various types of prepaid products that are not payroll card accounts, accounts used for

[189] 71 FR 51437, 51441 (Aug. 30, 2006).

the distribution of government benefits, or gift cards.[190]

After the Bureau assumed authority for implementing most of EFTA pursuant to the transfer of certain authorities from the Board to the Bureau under the Dodd-Frank Act, it analyzed whether other types of prepaid products, in addition to payroll card accounts, certain government benefit accounts, and gift cards, could or should be expressly included within Regulation E. In the Prepaid ANPR, the Bureau explained that in the six years that had elapsed since the Board issued the Payroll Card Rule, the prepaid card market had changed markedly. Beyond just industry growth, consumers also have increasingly used prepaid products the same way other consumers use traditional demand deposit accounts. Further, as general use prepaid cards become a more accepted and well-known alternative financial product, the difference between prepaid and traditional deposit accounts begins to blur. Thus, the Bureau sought comment in the Prepaid ANPR on how the Bureau should define GPR cards in the context of Regulation E and whether certain prepaid products should not be included in this definition, such as cards that may serve a limited purpose (*e.g.,* university cards or health spending cards).[191]

In the first instance, most commenters to the Prepaid ANPR (industry, consumer advocacy groups, and others) did not object to bringing prepaid products within the ambit of Regulation E, at least at some broad level. While there were some concerns from industry and others, which are discussed further below, about exactly which types of prepaid products the Bureau might subject to Regulation E, most commenters favored inclusion of GPR cards, with some reservations about specific provisions of the rule. Among other reasons, several trade associations noted that insofar as many GPR card issuers and program managers already voluntarily comply with Regulation E, the Bureau should formalize GPR cards' inclusion in Regulation E as a means of standardizing protections for consumers.

Most comments focused on the types of prepaid products the Bureau should include in this rulemaking and the scope of any resulting rules. Many industry commenters urged the Bureau to focus its rulemaking only on those products that consumers can or do use in the same ways as traditional demand deposit accounts. Many commenters contrasted such products, which include GPR cards (which do not have limits on where and how consumers can use the product), with those that are issued with restrictions on use. Commenters suggested, for example, that the Bureau exclude Health Savings Account cards because they cannot be used in the place of a traditional demand deposit account due to limitations on their use. Similarly, industry commenters also suggested that the Bureau exclude limited-use transit cards, university cards, and mall cards. Some industry commenters also urged the Bureau to exclude certain corporate-related cards, such as those used for expense reimbursement or for distribution of health or transit benefits. Within this vein, industry commenters also suggested that the Bureau exclude cards used to disburse insurance payments because, one commenter argued, they are not part of the class of consumer asset accounts intended to be regulated under Regulation E. Another industry commenter argued that cards that are not reloadable by the consumer or that are corporate-funded typically serve a limited audience for a limited use and therefore should not be covered by the proposed rule. Further, these commenters warned that if such cards were covered by the definition of prepaid accounts, the cost of adding Regulation E protections could cause issuers of those cards to discontinue offering them.

In addition, industry commenters disagreed over whether the Bureau should limit its proposed rule to products represented by physical cards or whether it should also include other types of prepaid products such as those that are entirely online (and might use a barcode or QR code displayed on a mobile device such as a smartphone or other online means to interact with a payment network). One prepaid card distributor commenter urged the Bureau to include these non-card products because such products may have the same features as physical cards. However, commenters urged the Bureau to distinguish between digital wallets that simply store payment credentials for other accounts or cards and those non-card products that in fact store funds themselves. To the extent that the credentials loaded into a digital wallet are for other accounts are protected by Regulations E or Z, commenters argued that those products should provide consumers with sufficient protections without direct regulation of the wallets themselves. With the exception of these few topics, however, industry commenters generally discussed how Regulation E's substantive requirements should be tailored to prepaid products rather than what products should be defined as prepaid accounts in the first instance. These comments are discussed in detail below.

Consumer group commenters generally did not favor restrictions on any definition the Bureau might propose; they instead favored inclusion of limited purpose products such as university cards, health spending cards, and other similar products. They argued that the Bureau should include in its proposed definition all products that act like debit cards and that are currently not covered by Regulation E, as well as certain reloadable gift cards. Like many industry commenters, consumer groups urged the Bureau to apply Regulation E to those prepaid products that consumers can use as transaction account substitutes because, in part, consumers do not know that debit cards may have protections that prepaid products lack. The consumer groups diverged from industry commenters, however, by largely urging the Bureau not to modify the substantive requirements of Regulation E in applying them to prepaid products. These differences are discussed in detail below.

In addition to reviewing the comments it received on the Prepaid ANPR, the Bureau has conducted significant outreach to aid its understanding of the scope and diversity of the prepaid product marketplace. In particular, the Bureau has spoken with prepaid card program managers, issuers, distributors, processors, and other parties involved in various aspects of the prepaid card industry, as well as government agencies and non-profits that are involved in administering prepaid card programs. This outreach has included providers of prepaid products that are not sold to consumers, such as prepaid cards used to distribute financial aid to students and insurance payouts to consumers. The Bureau understands (based on its outreach efforts as well as its Study of Prepaid Account Agreements) that many providers of prepaid products voluntarily comply with most or all of Regulation E, as it applies to payroll card accounts. As discussed in detail below, the Bureau believes that objections about the burden of including various types of products within the ambit of this proposed rule are largely negated by the

[190] *See, e.g.,* FMS Rule, 75 FR 80335, 80337 (Dec. 22, 2010). However, as evidenced by the Study of Prepaid Account Agreements, many prepaid providers have, for a variety of reasons, elected to apply some or all of Regulation E's provisions (as modified by the Payroll Card Rule) to their non-payroll prepaid products generally.

[191] 77 FR 30923, 30925 (May 23, 2012).

fact that a significant majority of these products are already substantially in compliance with existing Regulation E provisions.

In developing this proposal, the Bureau first considered the applicability of EFTA to prepaid products. EFTA, among other things, governs transactions that involve an electronic fund transfer to or from a consumer's account. It defines an account to be ''a demand deposit, savings deposit, or other asset account . . . as described in regulations of the Bureau, established primarily for personal, family, or household purposes. . . .'' EFTA section 903(2), 15 U.S.C. 1693a(2). Insofar as the statute defines account broadly to include any other asset account and for the other reasons discussed below, the Bureau believes it is reasonable to interpret ''account'' in EFTA to include prepaid accounts. Thus, it proposes to include prepaid accounts expressly within Regulation E's definition of account. To clarify the scope of the proposed rule and to modify Regulation E to reflect the characteristics of prepaid accounts, the Bureau proposes to modify the definition of ''account'' under § 1005.2(b) to create a specific sub-definition for prepaid account.

The Bureau believes that proposing to apply Regulation E to prepaid accounts is appropriate for several reasons. As noted above and by many commenters, prepaid products are more frequently being used today by consumers as transaction account substitutes. In particular, GPR cards (including those sold at retail locations and online) are increasingly being used by consumers as a substitute for a checking account, credit card, or both. The Bureau also understands that consumers use other types of prepaid products as transaction account substitutes as well. For example, students may receive financial aid disbursements onto prepaid cards that the students then use as their primary transaction vehicle during the school term. Insurers may pay out insurance claims for property or casualty losses or workers' compensation claims onto prepaid cards. Consumers, in turn, may use this card as their primary transaction vehicle until the funds are depleted.

The Bureau recognizes that not all consumers use prepaid products as transaction account substitutes and that not all types of prepaid products lend themselves to use as transaction account substitutes. Nevertheless, the Bureau believes that the features of non-GPR card prepaid products as well as the ways consumers can and do use those products warrant their inclusion as prepaid accounts for several reasons. First, inclusion aligns appropriately with the purposes of EFTA. The legislative history of EFTA indicates that Congress' primary goal was to protect consumers using electronic fund transfer services. Although, at the time, providers of electronic payment services argued that enactment of EFTA was premature and that the electronic payment market should be allowed to develop further on its own, Congress believed that establishing a framework of rights and duties for all parties would benefit both consumers and providers.[192] Likewise, the Bureau believes that now it is appropriate to establish such a framework for prepaid accounts, because doing so would benefit both consumers and providers. In addition, were it to finalize this proposal, the Bureau believes that consumers will be better able to assess the risks of using prepaid products. Indeed, the Bureau is concerned that because prepaid cards can be so similar to credit and debit cards (which are protected under Regulations Z and E), consumers may not realize that their prepaid cards lack the same benefits and protections as those other cards. This proposal, if finalized, would serve to make these protections more consistent and eliminate a regulatory gap.

Second, the Bureau believes that the Board's reasoning in 2006 for excluding GPR cards from the Payroll Card Rule is now, eight years later, no longer applicable. At the time, the Board concluded that it was premature to cover other prepaid cards under Regulation E because, in its view of the marketplace at that time, consumers did not often use prepaid cards in the same way that they used payroll cards; the Board noted, ''for payroll card accounts that are established through an employer, there is a greater likelihood [than for GPR cards] that the account will serve as a consumer's principal transaction account and hold significant funds for an extended period of time.'' [193] The Board also noted that, in its opinion, to the extent that consumers use GPR cards like gift cards, ''consumers would derive little benefit from receiving full Regulation E protections for a card that may only be used on a limited, short-term basis and which may hold minimal funds, while the costs of providing Regulation E initial disclosures, periodic statements, and error resolution rights would be quite significant for the issuer.'' [194]

Third, consumers' use of prepaid products has evolved significantly since 2006. Although some consumers may continue to treat GPR cards and other prepaid products as if they were gift cards, many do not. Many consumers now use other types of prepaid products in the same ways and to fill the same needs as they did payroll card accounts in 2006. Consumers can and do have wages and/or benefits loaded onto prepaid cards through direct deposit and thus may load substantial sums onto their cards.[195] Consumers use prepaid cards for a variety of purposes, including making purchases, paying bills, and receiving payments.[196] For those consumers without other transaction accounts, they may depend entirely on their prepaid cards to meet their payment account needs.[197] As a result, the Bureau believes that such products should be considered consumer asset accounts subject to EFTA and Regulation E. The Bureau notes that while not all prepaid products can or will be used as transaction account substitutes, the proposed prepaid account definition discussed below appropriately includes a variety of prepaid product types that the Bureau believes warrant protection under Regulation E. The Bureau is concerned that to try to carve out very specific types of products that are, or can be, used for short-term limited purposes is complicated and could result in consumer confusion as to what protections might apply to otherwise indistinguishable products.

As the Bureau's consumer testing and industry studies have shown, many consumers are using prepaid accounts in the same ways as they use other types of accounts, such as debit and credit card accounts. Even if not all consumers

[192] *See* S. Rept. No. 95–915, at 2–3 (1978) and H.R. Rept. No. 95–1315, at 2–4 (1978).

[193] 71 FR 51441 (Aug. 30, 2006).

[194] 71 FR 1473, 1475 (Jan. 10, 2006) (also noting that GPR cards are ''generally designed to make one-time or a limited number of payments to consumers and are not intended to be used on a long-term basis'').

[195] *See, e.g.,* Fed. Deposit Ins. Corp, *Appendix to 2013 FDIC National Survey of Unbanked and Underbanked Households* (Oct. 2014) (2013 FDIC Survey), at 55, *available at https://www.fdic.gov/householdsurvey/2013report.pdf* (finding that for households that reloaded prepaid debit cards in the last 12 months, 17.7 percent of all households and 27.7 percent of unbanked households did so via direct deposit of a paycheck).

[196] *See, e.g., id.* at 48 (finding that for all households that used prepaid debit cards in the last 12 months, 44.5 percent did so to pay for everyday purchases or to pay bills and 19.4 percent did so to receive payments).

[197] *See, e.g., id.* (finding that finding that for unbanked households that used prepaid debit cards in the last 12 months, 65 percent did so to pay for everyday purchases or to pay bills and 41.8 percent did so to receive payments).

use their prepaid accounts in this way, consumers may not realize that, in many ways, their prepaid accounts may provide fewer protections than substitute products (and, in fact, may expect their prepaid cards to be safer).[198] Further, to the extent the Board determined that consumers in 2006 did not use prepaid accounts in a way that warranted regulatory protections, the Bureau believes that those conditions no longer exist. As discussed in detail below, the Bureau is proposing to bring a broad range of prepaid products within the ambit of Regulation E and also is proposing to modify certain substantive provisions of Regulation E as appropriate for different types of prepaid accounts.

In crafting the proposed definition of prepaid account, the Bureau has focused on prepaid product attributes and consumer use cases. While consumers are increasingly using prepaid accounts as transaction account substitutes, the Bureau does realize, as discussed above, that not all consumers will use prepaid accounts in that way and that many continue to maintain checking and other deposit accounts while also using prepaid accounts. The Bureau also acknowledges that certain accounts subject to the proposed definition (*e.g.,* products usable only for person-to-person transfers and products that cannot be reloaded) cannot be used as transaction account substitutes. Nevertheless, because the Bureau believes that consumer protections are best understood when they apply evenly across like products, the Bureau is proposing a definition that would focus on attributes relating to how prepaid accounts are issued and used, instead of how or where they are loaded (and by whom). The Bureau believes it appropriate to cast a wide net in including products within the proposed definition of prepaid account even if, as discussed further below, it may also be appropriate to adjust certain provisions in Regulation E depending on a particular product's features and how it can be used.

The proposed definition of prepaid account is discussed below. It is followed by a discussion of the modifications and limitations the Bureau is proposing for that definition. Finally, the new requirements and modifications the Bureau is proposing to Regulation E for prepaid accounts are discussed.

2(b)(2) Bona Fide Trust Account

The current definition of account in Regulation E includes an exception for bona fide trust accounts. *See* existing § 1005.2(b)(3). To accommodate the proposed definition for the term prepaid account and a proposed adjustment to the definition of payroll card account, the Bureau proposes to renumber the exception for bona fide trust accounts as § 1005.2(b)(2) without any substantive changes to the exception. Note that to accommodate this proposed change, the Bureau does not need to renumber existing comments 2(b)(2)–1 and –2 because those comments are currently misnumbered in the Official Interpretations to Regulation E.

2(b)(3) Prepaid Account

Overview

In determining to propose revisions to Regulation E's definition of account to include prepaid accounts, the Bureau considered which types of prepaid products should be covered by its proposed definition. As discussed below, the Bureau proposes to add new § 1005.2(b)(3) to set forth this proposed definition.

2(b)(3)(i)

Proposed § 1005.2(b)(3)(i) would define the term prepaid account as a card, code, or other device, that is not otherwise an account under § 1005.2(b)(1), that is established primarily for personal, family, or household purposes, and that satisfies three additional criteria as laid out in proposed § 1005.2(b)(3)(i)(A) through (C), discussed below.

The Bureau's proposed definition of prepaid account is based on the formulation for the definition of general-use prepaid card in the Gift Card Rule (§ 1005.20). As the Board noted when it adopted the Gift Card Rule, that definition of general-use prepaid card largely tracks the language of the Credit CARD Act as codified in EFTA Section 915(a)(2)(A).[199] The Bureau examined other similar definitions, such as those used in FinCEN's Prepaid Access Rule or in the Board's Regulation II, but believes that its proposed approach aligns, as explained in detail below, best with the types of prepaid products the proposed definition is intended to cover and with the purposes of EFTA and Regulation E. The Bureau believes that its proposed definition closely calibrates to the products that it intends to cover as well as provides greater consistency within Regulation E.

Proposed comment 2(b)(3)(i)–1 would clarify that for purposes of subpart A to Regulation E, except for § 1005.17 (requirements for overdraft services), the term ''debit card'' also includes a prepaid card.

The first part of the proposed definition—an account established primarily for personal, family, or household purposes—mirrors a portion of the existing definition of account. *See* §§ 1005.2(b)(1). Proposed comment 2(b)(3)(i)–2 would explain that proposed § 1005.2(b)(3) applies only to cards, codes, or other devices that are acquired by or provided to a consumer primarily for personal, family, or household purposes. For further commentary interpreting this phrase, proposed comment 2(b)(3)(i)–2 would refer to existing comments 20(a)–4 and –5.

2(b)(3)(i)(A)

Proposed § 1005.2(b)(3)(i)(A) would define a prepaid account as either issued on a prepaid basis to a consumer in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter.

This portion of the proposed definition expands upon the phrase ''issued on a prepaid basis'' used in the Gift Card Rule's definition of general-use prepaid card in § 1005.20(a)(3).[200] However, the Bureau seeks to ensure that accounts that are not loaded at acquisition are nonetheless eligible to be prepaid accounts. Unlike gift cards, which are typically loaded with value at purchase, other types of prepaid products may be issued before a consumer or third party loads value onto it (*e.g.,* payroll card accounts). The Bureau believes that the Gift Card Rule's limitation is unnecessary and inappropriate with respect to its definition for prepaid accounts. Thus, because the Bureau believes that prepaid products should be subject to the same protections regardless of the timing of loading, the proposed definition also includes a prepaid product that is ''not issued on a prepaid

[198] *See, e.g.,* ICF Report, at 10 (noting that ''When asked what would happen if there were a fraudulent or inaccurate charge on their prepaid account, most participants believed that their prepaid card provider would credit the funds to their account. This belief seemed to be based almost exclusively on prior experiences with prepaid card providers and other financial institutions, rather than an understanding of any legal protections that may or may not exist.'')

[199] *See* 75 FR 16580, 16588 (Apr. 1, 2010). Congress also used this definition of prepaid card in the Dodd-Frank Act provisions governing debit card interchange and routing requirements. Dodd-Frank Act section 1075, EFTA section 920(a)(7)(A)(ii), 15 U.S.C. 1693o–2(a)(7)(A)(ii).

[200] Section 1005.20(a)(3) defines the term general use prepaid card as ''a card, code, or other device that is: (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and (ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.''

basis but capable of being loaded with funds thereafter.''

The Bureau is also proposing this approach in part because it is concerned that prepaid providers could restructure existing products to avoid coverage by the proposed rule if they were to separate account acquisition from initial funding. For example, a GPR card provider could create a card product that did not require an initial load at the time of purchase or a university could give a card to a student prior to the disbursement of financial aid and, without the proposed additional language, could be outside the proposed rule. The Bureau believes that by making the scope of the proposed definition broad it will limit attempts to evade the proposed consumer protections for prepaid accounts. In addition, the Bureau believes that this proposed provision would ensure that consumers who use prepaid accounts receive the protections in this proposed rule—particularly the pre-acquisition disclosures regarding fees and other key terms—prior to and upon establishment of the account.

Proposed comment 2(b)(3)(i)–3 would clarify that to be ''issued on a prepaid basis,'' a prepaid account must be loaded with funds when it is first provided to the consumer for use. For example, if a consumer purchases a prepaid account and provides funds that are loaded onto a card at the time of purchase, the prepaid account is issued on a prepaid basis. A prepaid account offered for sale in a retail store is not issued on a prepaid basis until purchased by the consumer.

Proposed comment 2(b)(3)(i)–4 would clarify what types of accounts would satisfy the portion of the proposed prepaid account definition regarding an account that is not issued on a prepaid basis but is capable of being loaded with funds thereafter. Specifically, proposed comment 2(b)(3)(i)–4 would explain that a prepaid account that is not issued on a prepaid basis but is capable of being loaded with funds thereafter includes a prepaid card issued to a consumer with a zero balance to which funds may be loaded by the consumer or a third party subsequent to issuance. This does not include a product that can never store funds, such as digital wallet that only holds payment credentials for other accounts.

Proposed comment 2(b)(3)(i)–5 would clarify that to satisfy proposed § 1005.2(b)(3)(i)(A), a prepaid account must either be issued on a prepaid basis or be capable of being loaded with funds. This means that the prepaid account must be capable of holding funds, rather than merely acting as a pass-through vehicle. For example, if a product is only capable of storing a consumer's payment credentials for other accounts but is incapable of having funds stored on it, such a product would not be a prepaid account. However, if a product allows a consumer to transfer funds, which can be stored before the consumer designates a destination for the funds, the product would satisfy proposed § 1005.2(b)(3)(i)(A).

With these examples, the Bureau seeks to make clear that it does not intend to extend the proposed definition of prepaid account to a product that can never store funds. To the extent that a digital wallet, for example, merely stores payment credentials (*e.g.,* a consumer's bank account or payment card information), rather than storing the funds themselves, the digital wallet would not be considered a prepaid account under the proposed rule. If, however, a digital wallet allows a consumer to store funds in it directly, then the digital wallet would be a prepaid account if the other criteria of the proposed definition are also met.

The Bureau proposes not to limit its definition to prepaid accounts that are reloadable, as explained in proposed comment 2(b)(3)(i)–6, which would provide that prepaid accounts need not be reloadable by the consumer or a third party. Some industry commenters to the Prepaid ANPR urged the Bureau to limit this proposed rule to those products that can be reloaded by a consumer. One of these commenters urged exclusion for cards issued pursuant to a special arrangement (such as insurance cards), arguing that such cards are quite different than GPR cards since they are not reloadable by the consumer. These commenters did not cite specific evidence to provide a basis for such a rationale. On the other hand, some industry commenters and several consumer group commenters suggested a more expansive rule based on how the consumer expects to use the card, rather than on how it may be loaded with funds.

The Bureau believes that it would be inappropriate to exclude a product from the definition of prepaid account based on whether it can be reloaded or who can (or cannot) load funds into the account. First, products that may limit consumers from loading funds include payroll card accounts, which are already subject to Regulation E. Other products reloadable only by a third party also may hold funds which similarly represent a meaningful portion of a consumer's available income. This may be true, for example, for students receiving financial aid disbursements or a consumer receiving worker's compensation payments. The Bureau believes that, like consumers relying on payroll card accounts, which the Board previously acknowledged should be protected by Regulation E,[201] consumers may use these products as transaction account substitutes even when consumers cannot reload the cards themselves, and thus such products should be similarly protected.

Second, the Bureau does not believe that non-reloadable prepaid products should have fewer protections than reloadable products. While it is true that consumers may not generally use non-reloadable products as transaction account substitutes given that the funds will eventually be spent down in their entirety, the Bureau believes that extending protections to all broadly usable prepaid accounts is beneficial to consumers. As noted, consumers may not realize the differences between protections available for traditional debit cards and prepaid cards and even less so between different types of prepaid products. Providers' marketing strategies could exacerbate these concerns. To the extent prepaid accounts are marketed as being ''safer'' than other products, consumers are less likely to understand technical and legal differences in regulatory coverage.

Third, if the Bureau excluded non-reloadable cards from the definition of prepaid account, a provider intent on evading Regulation E could issue non-reloadable cards repeatedly to the same consumer instead of reloading a covered reloadable card. Including non-reloadable products (that otherwise meet the relevant criteria) in the proposed definition of prepaid account would eliminate this possibility.

Nevertheless, the Bureau seeks comment on the scope of this part of the proposed definition, including as to specific types of prepaid products that should be included or excluded from coverage, as well as the rationale for inclusion or exclusion. In particular, the Bureau seeks comment on whether the definition as proposed could have the unintended consequence of including products that do not warrant protection by the Bureau as well as any additional concerns regarding products covered by the proposed definition. The Bureau requests that commenters specifically identify the reasons why inclusion of particular products in the definition of prepaid account would be burdensome to providers or not beneficial to consumers, including relevant data to support claims where available and appropriate.

[201] *See* 71 FR 51437, 51441 (Aug. 30, 2006).

The Bureau's proposed definition does not focus on particular products based on how they are distributed—such as GPR cards sold at retail locations or payroll card accounts distributed by employers—but instead focuses on the characteristics of a product—such as whether it can store funds and how it can be used by a consumer. An alternative approach would have been to list specific types of products. The Bureau is not proposing such an approach because it believes that it is difficult to craft such a list that would remain accurate as products evolve and that such a list would create opportunities for evasion. Finally, the Bureau also requests comment on whether it should adopt specific exceptions to the proposed definition.

2(b)(3)(i)(B)

The next part of the proposed definition of prepaid account addresses how such products must be able to be used to be considered a prepaid account. As the Board noted in adopting the Gift Card Rule, a key difference between a general-use prepaid card and a store gift card is where the card can be used.[202] While store gift cards and gift certificates can be used at only a single merchant or an affiliated group of merchants (*see* § 1005.20(a)(1)(ii) and (2)(ii)), a general-use prepaid card is defined, in part, as redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines (§ 1005.20(a)(3)(ii)). In response to the Prepaid ANPR, commenters largely urged that the Bureau maintain this distinction. As noted above, some industry commenters also urged the Bureau to exclude from the proposed rule those products that are issued with restrictions on how or where they can be used, such as health savings account cards and certain transit cards.

The Bureau is proposing to add § 1005.2(b)(3)(i)(B), which would state that to qualify as a prepaid account, the card, code or other device must be redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at automated teller machines, or usable for person-to-person transfers. Proposed comment 2(b)(3)(i)–7 would refer to existing comments 20(a)(3)–1 and –2 from the Gift Card Rule for guidance regarding the meaning of the phrase multiple, unaffiliated merchants.[203]

The Bureau believes it is appropriate to limit the definition of prepaid account to those products that consumers can use at multiple unaffiliated merchants for goods or services, at ATMs, or for P2P transfers. First, a core feature of a conventional debit card is that it is usable at multiple, unaffiliated merchants and at ATMs. Insofar as a purpose of this rulemaking is to provide comparable coverage for products with comparable functionality—in this case traditional debit cards and prepaid cards—it is appropriate to structure the proposed definition in a way that products with similar features have the protections afforded by Regulation E. Additionally, insofar as the Bureau understands that consumers expect to have equivalent protections on prepaid accounts that they do on accounts linked to debit cards, it is appropriate to include in the definition of prepaid account those products that have attributes similar to debit cards.

In other words, a prepaid account would be one that is accepted widely at unaffiliated merchants, rather than only a single merchant or specific group of merchants, such as those located on a college campus or within a mall or defined shopping area. The Bureau believes that products usable at a single merchant (*e.g.,* a merchant's gift card) do not warrant equivalent protections at this time. The Bureau believes it is appropriate to exclude closed loop gift cards from this rulemaking because of how they differ from other prepaid products and traditional debit cards. Not only can closed loop gift cards not be used in lieu of more traditional banking products, but they also cannot be used for P2P transfers or in any other way other than transacting with a merchant on the closed loop. As a result, consumers are less likely to load funds needed for day-to-day use or to load a substantial amount of funds onto such a card. Thus, the Bureau does not believe it appropriate to provide those products with the same protections at this time. While consumers may mistakenly assume that protections that apply to debit cards also apply to general-use prepaid cards, they are unlikely to be similarly confused with respect to closed loop gift cards. Indeed, consumers often do not register gift cards and are frequently instructed to treat them like cash.[204] However, as merchants and others increasingly move to accepting card-based payments for their products and services, prepaid accounts have become more viable substitutes for more traditional financial products and services.

Prepaid products are also growing in popularity as a vehicle for consumers to transmit payments to each other or to businesses. The Bureau has identified an increasing number of products that allow consumers to make P2P or P2B payments without using a third-party branded payment network. These services may not always have wide merchant acceptance, but they do allow consumers to send money to other consumers and businesses. While some P2P transfer products may also be usable at an ATM or redeemable at multiple, unaffiliated merchants, some are not. However, unlike many limited-use prepaid products that have acceptance limited to a restricted location (such as on a college campus or in a mall), P2P products do not have such a limitation. Indeed, insofar as a P2P product may be accepted by anyone that contracts with the P2P provider, the model is not very different from a card association that contracts with unaffiliated merchants. Further, insofar as consumers may use these products to pay anyone with funds stored in the account, the Bureau believes that they should be included in the proposed definition of prepaid account.

The Bureau recognizes, however, that a product that is solely usable for storing funds and P2P transfers is different from other types of prepaid accounts, such as GPR cards. The Bureau believes that there is benefit to consumers in harmonizing those protections with those currently offered (and, if the proposal is finalized, that will be offered) by other types of prepaid accounts. Thus, the Bureau proposes to add new comment 2(b)(3)(i)–8 to further explain when accounts capable of P2P transfers are prepaid accounts. Specifically, the comment would explain that a prepaid account capable of person-to-person transfers is an account that allows a consumer to send funds to another consumer or business. An account may qualify as a prepaid account if it permits person-to-person transfers even if it is neither redeemable upon presentation at multiple, unaffiliated merchants for goods or services, nor usable at ATMs. A transaction involving a store gift card would not be a person-to-person transfer if it could only be used to make payments to the merchant or affiliated group of merchants on whose behalf the card was issued.

[202] *See* 75 FR 16580, 16588 (Apr. 1, 2010).

[203] The Gift Card Rule explains that a card, code, or other device is redeemable upon presentation at multiple, unaffiliated merchants if, for example, such merchants agree to honor the card, code, or device if it bears the mark, logo, or brand of a payment network, pursuant to the rules of the payment network. *See* comment 20(a)(3)–1.

[204] *See, e.g.,* Dan Rutherford, *Giving or receiving gift cards? Know the terms and avoid surprises,* CFPB Blog Post (Dec. 21, 2012), *http://www.consumerfinance.gov/blog/giving-or-receiving-gift-cards-know-the-terms-and-avoid-surprises/.*

The Bureau seeks comment on this portion of its proposed definition of prepaid account. In particular, the Bureau solicits comment on P2P payment products and whether they warrant inclusion in this rule. Note, of course, that a P2P payment product must satisfy the other requirements of the proposed rule to be a prepaid account, including that the product be capable of storing funds. The Bureau also seeks comment on whether there are specific types of products that offer P2P services that the Bureau should specifically exempt, such as those that are provided or established by an employer primarily for use at an affiliated group of merchants even if those products can be used to make occasional or incidental transfers to other employees, or for P2P products that are not available to the general public.

2(b)(3)(i)(C)

Regulation E's gift card provisions cover some prepaid products that also could fall within the proposed definition of prepaid account as described above. In particular, § 1005.20 contains provisions applicable to gift certificates, store gift cards, and general-use prepaid cards.[205] For those products marketed and sold as gift cards (and that meet certain other qualifications), the Gift Card Rule requires certain disclosures, limits the imposition of certain fees, and contains other restrictions. The Gift Card Rule is distinct from the rest of subpart A of Regulation E, however, and does not provide consumers who use gift cards with the other substantive protections of Regulation E, such as limited liability and error resolution protections, or periodic statements. The Gift Card Rule expressly excludes those general-use prepaid cards that are reloadable and not marketed or labeled as gift cards or gift certificates, while including general-use prepaid cards that are not reloadable as well as those that are marketed or labeled as gift cards or gift certificates. *See* § 1005.20(b)(2).

In response to the Prepaid ANPR, the Bureau received numerous industry comments urging it to exclude gift cards from this proposed rule. In their letters, these commenters argued that the protections for gift cards in the Gift Card Rule more appropriately match how such products are used. As one commenter noted, a consumer is unlikely to replace a traditional deposit account with a gift card that can only be used at a single merchant. Other commenters noted that many provisions of Regulation E would not be easily applied to most gift cards. For example, to the extent that this proposed rule might apply error resolution provisions to gift cards, such a rule might be difficult to apply because gift card holders often do not register the cards, thus potentially making it difficult for providers to determine when unauthorized transactions occur. Similarly, providing access to transactional account history to gift cardholders could also be difficult and impractical.

Commenters were also concerned that it would be overly burdensome if prepaid products were subject both to the requirements of this proposed rule and the Gift Card Rule. To the extent they expressed an opinion, consumer group commenters largely agreed that existing protections for gift cards were sufficient, although one consumer group commenter urged the Bureau to include network branded open loop reloadable gift cards loaded with at least $500, because when a card is loaded with $500 the risk of harm from loss is higher.

The Bureau is proposing to add § 1005.2(b)(3)(i)(C), which would provide that a prepaid account is not a gift certificate as defined in § 1005.20(a)(1) and (b); a store gift card as defined in § 1005.20(a)(2) and (b); a loyalty, award, or promotional gift card as defined in § 1005.20(a)(4) and (b); or a general-use prepaid card as defined in § 1005.20(a)(3) and (b) that is both marketed and labeled as a gift card or gift certificate.

The Bureau notes that the exemption in the Gift Card Rule for general-use prepaid cards applies to products that are reloadable and not marketed *or* labeled as gift cards or gift certificates. *See* § 1005.20(b)(2). The Bureau is proposing to exclude from the definition of prepaid account only such general-use prepaid products that are both marketed and labeled as gift cards or gift certificates, as the Bureau is concerned that some products it intends to include may be inadvertently excluded due to occasional or incidental marketing activities. Comment 2(b)(3)(i)–9 would explain this distinction. For example, comment 20(b)(2)–2 describes, in part, a network-branded general purpose reloadable card that is principally advertised as a less-costly alternative to a bank account but is promoted in a television, radio, newspaper, or internet advertisement, or on signage as ''the perfect gift'' during the holiday season. For purposes of the Gift Card Rule, such a product would be considered marketed as a gift card or gift certificate because of this occasional holiday marketing activity. For purposes of proposed § 1005.2(b)(3)(i)(C), however, such a product would not be considered to be both marketed and labeled as a gift card or gift certificate and thus would be covered by the definition of prepaid account.

Generally speaking, the Bureau believes that having to apply both the existing gift card regulatory requirements and the proposed prepaid account requirements could adversely impact the gift card market, although the Bureau recognizes that some of the concerns it has regarding prepaid accounts can also be applied to gift cards. The Bureau acknowledges that if the requirements of this proposed rule were applied to gift cards at this time, it is possible that those requirements, in the context of the typical gift card, could confuse consumers and disrupt many gift cards' cost structures. For example, the Gift Card Rule already specifies disclosure with respect to key fees that are typically imposed in connection with gift cards. *See* § 1005.20(c)(3). In addition and as noted previously, the Bureau believes that consumers may be more aware that gift cards have fewer protections than other products and thus treat gift cards accordingly.[206] Because most gift cards are not reloadable, not usable at ATMs, and/or not open loop, consumers are less likely to use gift cards as transaction account substitutes. Were the Bureau to impose provisions for access to account information and error resolution, and create limits on liability for unauthorized EFTs, the Bureau is concerned that the cost structure of gift cards could change dramatically; unlike other types of prepaid products (which, as the Bureau's Study of Prepaid Account Agreements indicates, already are frequently in compliance with many existing provisions of Regulation E), gift cards do not typically offer these protections. In addition, while issuers of GPR cards typically encourage consumers to register their cards (so that the cards can become reloadable), the same motivations do not exist for open-loop gift cards. The Bureau nevertheless seeks comment on whether it would be

[205] The Gift Card Rule defines a general-use prepaid card as ''a card, code, or other device that is: (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and (ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.'' § 1005.20(a)(3).

[206] *See, e.g.,* Fed. Trade Comm'n, *Consumer Information: Gift Cards* (Feb. 2011), *https://www.consumer.ftc.gov//0182-gift-cards* (Web page providing consumers with general information on buying and using gift cards).

appropriate to impose the provisions in this proposal on some or all types of gift cards, the nature of consumer harm with respect to gift cards, and whether the Bureau's understanding of gift cards as discussed herein is accurate.

The Bureau understands that there are certain non-reloadable products covered by the Gift Card Rule that providers do not market or sell as gift cards (and instead may be marketed more like prepaid accounts) and that may be used more broadly, and these cards would be covered by both the Gift Card Rule and this proposal. In addition, these products are typically network branded and thus appear similar to other types of covered prepaid accounts. For example, the Bureau understands providers are increasingly looking to market non-reloadable prepaid products to consumers as a means of conducting specific transactions (*e.g.,* paying a single utility bill or making a purchase online). Despite the fact that these may be marketed as a single-use (as opposed to reloadable) prepaid card, the fact that these products are not marketed or labeled as gift cards, and are network branded and usable at any merchant that accepts the network brand may imply to consumers that these products are the same as the reloadable version of the product and thus warrant the same protections. The Bureau seeks comments on whether and, if so, how compliance with both this proposed rule and the Gift Card Rule would impose unique burdens on financial institutions offering such cards. The Bureau also seeks comment on whether the provisions of the Gift Card Rule alone are sufficient to protect those consumers that use non-reloadable general-use prepaid cards not marketed or sold as gift cards or gift certificates or whether consumers of such products would benefit from the proposed rule's protections. Finally, the Bureau seeks comment on whether there are any other types of products not discussed herein to which the Gift Card Rule applies and which might also be affected by this proposal.

2(b)(3)(ii)

As discussed above, Regulation E currently contains provisions specific to payroll card accounts and specifically defines such accounts. *See* § 1005.2(b)(2). Insofar as the Bureau is generally proposing to adapt existing payroll card account rules to prepaid accounts in § 1005.18, which currently addresses only payroll card accounts, the term payroll card account would be largely subsumed within the larger definition of prepaid account. Nevertheless, the Bureau believes that because there are certain provisions of Regulation E that would remain specific to payroll card accounts, it is appropriate to propose to maintain the term payroll card account as a standalone sub-definition of prepaid account. Specifically, the Bureau proposes that § 1005.2(b)(3)(ii) provide that the term ''prepaid account'' includes a ''payroll card account'' and would otherwise restate the existing payroll card account definition. In addition, the Bureau proposes to renumber existing comment 2(b)–2, which concerns certain employment-related cards not covered as payroll card accounts, as comment new 2(b)(3)(ii)–1. In addition, the Bureau proposes to add to new comment 2(b)(3)(ii)–1 an explanation that the existing examples given of cards would not be payroll card accounts (*i.e.,* cards used solely to disburse incentive-based payments, such as bonuses, disbursements unrelated to compensation, and cards used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations where other payment methods are unavailable), such cards could constitute prepaid accounts generally, provided the other conditions of the proposed definition of that term in § 1005.2(b)(3) are satisfied. Similar to existing comment 2(b)–2, proposed comment 2(b)(3)(ii)–1 would also state that, in addition, all transactions involving the transfer of funds to or from a payroll card account or prepaid account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive-based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

The Bureau seeks comment on this portion of its proposed definition of prepaid account.

2(b)(3)(iii)

As discussed above, Regulation E currently contains provisions in § 1005.15 that are specifically applicable to an account established by a government agency for distributing government benefits to a consumer electronically. While such accounts are currently defined only in existing § 1005.15(a)(2), the Bureau believes that given the other modifications to Regulation E proposed herein, it is appropriate to explicitly add such accounts used for the distribution of government benefits as a stand-alone sub-definition of prepaid account as well. Specifically, the Bureau is proposing that § 1005.2(b)(3)(iii) state that the term prepaid account includes a government benefit account, as defined in existing § 1005.15(a)(2). The Bureau seeks comment on this portion of its proposed definition of prepaid account.

2(b)(3)(iv)

Proposed § 1005.2(b)(3)(iv) would address prepaid products established in connection with certain health care and employee benefit programs. Specifically, the proposed provision would state that the term prepaid account does not include a health savings account, flexible spending account, medical savings accounts, or a health reimbursement arrangement. Proposed comment 2(b)(3)(iv)–1 would define these terms by referencing existing provisions in the Internal Revenue Code. Specifically, the Bureau is proposing that ''health savings account'' means a health savings account as defined in 26 U.S.C. 223(d); ''flexible spending account'' means a cafeteria plan which provides health benefits or a health flexible spending arrangement pursuant to 26 U.S.C. 125; ''medical savings account'' means an Archer MSA as defined in 26 U.S.C. 220(d); and ''health reimbursement arrangement'' means a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of 26 U.S.C. 106.

The Bureau believes that while these health care and employee benefit accounts may, in some ways, be similar to other types of prepaid accounts, coverage under Regulation E is not necessary at this time. These products typically come with limits on the amount of funds that can be loaded on to them, the methods for loading, and numerous restrictions on where, when, and how those funds can be spent. These products can rarely be used to withdraw cash or to send money to another person or make payment to any merchant of the consumer's choosing (such as can be done with a P2P product or a GPR card). Instead, health insurers or employers (or their service providers) typically issue these products in connection with a consumer's healthcare or employee benefits plan and are governed by the terms of that plan and related regulations.[207] For example, health savings accounts and medical savings accounts can typically only be used to pay for qualified medical expenses. Nevertheless, the

[207] *See, e.g.,* Internal Revenue Serv., Publication 969, *Health Savings Accounts and Other Tax-Favored Health Plans* (Jan. 22, 2014), *available at http://www.irs.gov/pub/irs-pdf/p969.pdf.*

Bureau seeks comment on whether these or other types of health care and employee benefit accounts should be included within the definition of prepaid account in light of the important role they play for consumers.

Scope of Proposed Definition and Application to Virtual Wallets and Virtual Currency Products

The Bureau seeks comment on the scope of its proposed definition for the term prepaid account. In particular and as noted above, the Bureau is aware of an increasing number of mobile financial products, each with different features, capabilities, and consumer protections. Determining how this proposed rule might apply to those products may be difficult in light of the quick evolution of these products and their features. Although the Bureau anticipates that this proposal, if effective today, would apply to relatively few mobile banking products (*see, e.g.,* proposed comments 2(b)(3)(i)–4 and 2(b)(3)(i)–5), it seeks comment on whether it has appropriately predicted the scope of products this rule would apply to and whether there are products it excludes that should be included or vice versa.

With respect to mobile financial products and services, the Bureau anticipates that this proposed rule would apply to certain mobile wallets. The Bureau also recognizes that the proposed rule may have potential application to virtual currency and related products and services. As a general matter, however, the Bureau's analysis of mobile financial products and services, as well as and virtual currencies and related products and services, including the applicability of existing regulations and this proposed regulation to such products and services, is ongoing. The proposed rule does not specifically resolve these issues.

Section 1005.10 Preauthorized Transfers

10(e) Compulsory Use

10(e)(1) Credit

In the discussion of the Bureau's proposed changes to Regulation Z, below, the Bureau explains in detail its approach to regulation of overdraft services and credit features on prepaid accounts. (That discussion provides an overall explanation of the Bureau's proposed approach to overdraft services and other credit features in connection with prepaid accounts in this rulemaking, including with respect to proposed changes to Regulation E, the details of which are set forth below.) As part of that approach, the Bureau is proposing to revise the compulsory use provision of Regulation E, § 1005.10(e)(1), to make clear that it applies to credit features offered on prepaid accounts.

EFTA's compulsory use provision, EFTA section 913(1), prohibits any person from conditioning the extension of credit to a consumer on the consumer's repayment by means of preauthorized electronic fund transfers. As implemented in Regulation E, § 1005.10(e)(1) currently states that ''[n]o financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.'' The term ''credit'' is defined in § 1005.2(f) to mean the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor. The term ''preauthorized electronic fund transfer'' is defined in § 1005.2(k) to mean an electronic fund transfer authorized in advance to recur at substantially regular intervals. *See* EFTA section 903(10).

Congress enacted the compulsory use provision to prevent financial institutions that are creditors from mandating repayment of credit by future preauthorized electronic fund transfers. Were the compulsory use provision not to exist, creditors could access consumers' available funds at the same institution via direct transfers, or at other institutions via recurring ACH transfers, to repay the debt. By doing so, consumers could lose access to these funds and lose the ability to prioritize repayment of debits, as a creditor could compel the consumer to grant the creditor preauthorized transfer access to a consumer's asset account as a condition for agreeing to provide credit to that consumer.

As is discussed below, the Bureau proposes certain modifications to the compulsory use provision. In particular, the Bureau proposes not to extend the provision's exception for overdraft credit plans to such plans offered on prepaid accounts. As discussed in more detail in the section-by-section analysis of Regulation Z proposed § 1026.12(d), the Bureau believes that applying § 1005.10(e)(1), with the proposed changes discussed below, along with proposed changes to the timing requirement for a periodic statement in Regulation Z § 1026.5(b)(2)(ii), and the prohibition on offsets in Regulation Z § 1026.12(d), would together allow consumers to retain control over the funds in their prepaid accounts even when a credit card feature becomes associated with that account.

By not extending the exception for overdraft credit plans in the current Regulation E compulsory use provision—and consistent with the statutory compulsory use provision (EFTA section 913(1))—creditors would be required to offer prepaid account consumers a means to repay their outstanding credit balances other than by automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking Web site). With the proposed changes to the Regulation Z periodic statement requirement—consistent with TILA section 163—creditors would be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle. And, with the proposed changes to the Regulation Z no-offset provision—consistent with TILA section 169—card issuers would be permitted to move funds automatically from the prepaid account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date (pursuant to the consumer's signed, written agreement that the issuer may do so).

Overdraft Credit Plans

In adopting what is now § 1005.10(e)(1) in 1981 to implement EFTA section 913(1), the Board used its EFTA exception authority to exclude overdraft credit plans from the general compulsory use rule of EFTA section 913(1).[208] Comment 10(e)(1)–2 further explains that a financial institution may require the automatic repayment of an overdraft credit plan.

The Bureau proposes to provide that the compulsory use provision's general

[208] See 46 FR 2972, 2973 (Jan. 13, 1981) (''After careful consideration of the issues raised, the Board is adopting the amendment as proposed. The Board believes that it has the legal authority to adopt this exception [for overdraft lines of credit] under section 904(c) of the act, which expressly authorizes the Board to provide adjustments and exceptions for any class of electronic fund transfer that in the Board's judgment are necessary or proper to carry out the purposes of the act or to facilitate compliance.''). Further, the bases for Bureau's proposal not to extend this exception to prepaid accounts is discussed below in the Overview of the Bureau's Regulation Z proposal.

prohibition against conditioning the extension of credit to a consumer on the consumer's repayment by means of preauthorized electronic fund transfers would apply to credit plans, including overdraft credit plans, that are credit card accounts under Regulation Z accessed by prepaid cards that are credit cards under proposed Regulation Z § 1026.2(a)(15)(i) or accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, discussed in further detail below. Regulation Z proposed comment 2(a)(15)–2.i.F would provide that the term ''credit card'' in § 1026.2(a)(15)(i) includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in Regulation Z § 1026.4(c) such as an applicable fee to apply for credit or a late payment fee and is not payable by written agreement in more than four installments. Regulation Z proposed comment 2(a)(15)–2.i.G, discussed below, would provide that the term ''credit card'' in § 1026.2(a)(15)(i) also includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. (Such an account number is referred to in the proposal as an ''account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.'') *See also* Regulation Z proposed § 1026.2(a)(15)(vii).

The proposal would revise § 1005.10(e)(1) to provide that the exception for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account does not apply to credit extended under a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z or accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

Proposed comment 10(e)(1)–3 would provide guidance on how the prohibition in § 1005.10(e)(1) applies to credit extended under a credit plan that is a credit card account accessed by prepaid cards or account numbers that are credit cards under Regulation Z as discussed above. Proposed comment 10(e)(1)–3 would explain that under § 1005.10(e)(1), creditors must not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z (§ 1026.2(a)(15)(i)). In addition, proposed comment 10(e)(1)–3 would provide that § 1005.10(e)(1) also would prevent creditors from requiring by electronic means on a preauthorized, recurring basis repayment of credit extended under a credit plan that is a credit card account accessed by an account number that is a credit card under Regulation Z (§ 1026.2(a)(15)(i)) where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Proposed comment 10(e)(1)–3 would also provide that the prohibition in § 1005.10(e)(1) would apply to any credit extended under a credit card plan as described above, including credit arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses a credit card plan as discussed above, the resulting credit would be subject to the prohibition in § 1005.10(e)(1) since it is incurred through a credit card plan, even though the consumer did not use an associated credit card.

Additionally, proposed comment 10(e)(1)–3 would cross-reference Regulation Z § 1026.2(a)(15)(i), comment 2(a)(15)–2.i.F to explain that a prepaid card is not a credit card under Regulation Z if the access device only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments. Thus, the prohibition in § 1005.10(e)(1) would not apply to credit extended under an overdraft credit plan that is not a credit card account. An overdraft credit plan would not be a credit card account if it is accessed only by a prepaid card that only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments.

Proposed comment 10(e)(1)–3.i would explain the connection between the prohibition in proposed § 1005.10(e)(1) on the compulsory use of preauthorized electronic fund transfers to repay credit extended under a credit plan accessed by prepaid cards that are credit cards and account numbers linked to prepaid accounts that are credit cards under Regulation Z § 1026.2(a)(15)(i) and comment 2(a)(15)–2.i.F and .G, and the prohibition on offsets by credit card issuers in proposed § 1026.12(d). Under Regulation Z § 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Under proposed Regulation Z § 1026.12(d)(3), with respect to credit card accounts that are accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only in particular prepaid accounts specified by the creditor, a card issuer generally would not be prohibited under § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of Regulation Z § 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account (such as a prepaid account) more frequently than once per calendar month, pursuant to such a plan. A card issuer for such credit card accounts would be prohibited under § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made to the deposit account. Under proposed Regulation Z § 1026.12(d)(3), with respect to credit card accounts that are accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only in particular prepaid accounts specified by the creditor, electronic fund transfers pursuant to a plan described in § 1026.12(d)(3) would be ''preauthorized electronic fund transfers'' under § 1005.2(k) because such electronic fund transfers would be authorized in

advance to recur periodically (but could not recur more frequently than once per calendar month). Proposed comment 10(e)(1)–3.i thus would explain that § 1005.10(e)(1) further restricts the card issuer from requiring payment from a deposit account (including a prepaid account) of credit card balances by electronic means on a preauthorized, recurring basis where the credit card account is accessed by an access device for a prepaid account, or is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

Consistent with the statutory text and purposes of EFTA, the Bureau proposes not to extend the exception for overdraft credit plans currently in § 1005.10(e)(1) to credit plans that are credit card accounts under Regulation Z accessed by prepaid cards or accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The purposes of EFTA are to establish the rights, liabilities, and responsibilities of consumers participating in EFT systems and to provide individual consumer rights. *See* EFTA section 902(b). Further, EFTA's legislative history states that EFTA compulsory use provision is ''designed to assure that EFT develops in an atmosphere of free choice for the consumer.'' [209] The Bureau believes its proposal not to extend the Regulation's existing exception for overdraft credit plans to prepaid accounts should ensure that consumers have choice when deciding whether and how to link their prepaid accounts to credit accounts and have control over the funds in their prepaid accounts if and when such a link is established.

As is discussed in greater detail below in the discussion of Regulation Z, the Bureau also believes that not extending the exception for overdraft credit plans to prepaid accounts is consistent with the purposes of and provisions in TILA (TILA section 169) and Regulation Z (§ 1026.12(d)) that prohibit offsets by credit card issuers and will protect consumers' right to exercise control over the funds deposited into their prepaid accounts. In particular, the Bureau believes that the proposed revisions to § 1005.10(e)(1) are necessary to prevent results that are contrary to these offset provisions. The Bureau is concerned that, with respect to credit card accounts that are accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only in particular prepaid accounts specified by the creditor, some card issuers may attempt to avoid the TILA offset prohibition by requiring that all or part of the cardholder's credit card debt be automatically deducted from the prepaid account to help ensure that the debt is repaid (similar to how overdraft services function today). For example, the Bureau believes that without the proposed changes to the compulsory use provision, financial institutions might require that prepaid account consumers set up automated payment plans to repay the overdraft credit advances and set the payment due date for each overdraft advance to align with the expected date of subsequent deposits to the prepaid account. The Bureau believes that this type of payment arrangement could undermine the purposes of the offset and periodic statement provisions in Regulation Z.

To the extent that the Board justified its original treatment of overdraft credit plans as providing benefits to consumers from automatic payment, the Bureau notes that under the proposal consumers would still be allowed to choose automatic payment for credit card accounts linked to prepaid accounts (as discussed above) if they find it beneficial to do so. The Bureau also believes that certain credit card rules in Regulation Z that would apply under the proposal to credit card accounts linked to prepaid accounts (as discussed above) would help consumers avoid late payments and excessive late fees with respect to overdraft plans. For example, under the Regulation Z proposal, card issuers would be required, under proposed § 1026.5(b)(2)(ii)(A)(*1*), to adopt reasonable procedures to ensure that Regulation Z periodic statements for credit card accounts linked to prepaid account (as discussed above) are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle. The Bureau believes this will help ensure that consumers have sufficient time after receiving periodic statements for the credit card accounts linked to prepaid accounts (as discussed above) to make payment on their credit card accounts. Also, under the Regulation Z proposal, card issuers of credit card accounts linked to prepaid accounts (as discussed above) would be limited in the circumstances in which they could increase interest rates for late payments and would be limited in the amount of late fees they could charge to consumers who pay late. *See* Regulation Z §§ 1026.52(b) and 1026.55.

This proposal does not address overdraft plans accessed by access devices that do not access prepaid accounts and does not amend the compulsory use provision as it applies to those other products.

Technical Revisions

Consistent with proposed § 1005.10(e)(1), comment 10(e)(1)–2 related to the exception for overdraft credit plans would be amended to explain that this exception does not apply to credit extended under a credit plan that is accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z, § 1026.2(a)(15)(i), or is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In addition, the proposal would move existing guidance in comment 10(e)(1)–1 related to when financial institutions may provide incentives to consumers to agree to automatic repayment plans to a new comment 10(e)(1)–4; no substantive changes are intended.

10(e)(2) Employment or Government Benefit

EFTA section 913(2), as implemented by § 1005.10(e)(2), provides that no financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit. Existing comment 10(e)(2)–1 explains that an employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. These provisions regarding compulsory use precede the addition of the Payroll Card Rule to Regulation E.

In September 2013, the Bureau reiterated the applicability of Regulation E's prohibition on compulsory use for payroll card accounts.[210] The Bureau explained that, among other things, Regulation E's compulsory use provision prohibits employers from mandating that employees receive wages only on a payroll card of the employer's choosing.[211]

The Bureau believes that the same standards should apply to government

[209] *See* Senate Report No. 95–915 at 16.

[210] CFPB Bulletin 2013–10, *Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.*

[211] *Id.* at 3.

benefit accounts. The Bureau is aware that many State and local governments use prepaid cards for distributing non-needs tested benefits and similar payments, such as unemployment insurance and child support payments.[212] These products are subject to EFTA and Regulation E. The Bureau understands that most, though not all, State governments using prepaid cards to distribute unemployment insurance payments also offer recipients the option of receiving these payments via direct deposit and/or paper check.[213]

Based on discussions with interested stakeholders, the Bureau is aware that some may have perceived some ambiguity surrounding compulsory use of prepaid cards to distribute non-needs tested state and local government benefits. Specifically, some questions have arisen as to whether compulsory use of prepaid cards for non-needs tested benefits is permissible under Regulation E. EFTA and Regulation E clearly apply to the electronic distribution of non-needs tested government benefits generally, and EFTA section 913(2) prohibits ''requiring a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of . . . receipt of a government benefit.''

Therefore, the Bureau believes it is appropriate to clarify the application of the compulsory use provision in Regulation E to accounts established to receive such benefits. Thus, the Bureau is proposing to add comment 10(e)(2)–2, which would make clear that a government agency may not require consumers to receive government benefits by direct deposit to any particular institution. A government agency may require direct deposit of benefits by electronic means if recipients are allowed to choose the institution that will receive the direct deposit. Alternatively, a government agency may give recipients the choice of having their benefits deposited at a particular institution (designated by the government agency) or receiving their benefits by another means. Relatedly, the Bureau seeks comment on whether a financial institution would comply with this provision if it provides the first payment to a benefit recipient on a government benefit card and, at that time, provides information on how to divert or otherwise direct future payments to an account of the consumer's choosing.

The Bureau is also proposing to make consumers' options more clear, for both government benefit accounts and payroll card accounts, via a notice on the pre-acquisition short form disclosure for these types of prepaid accounts. *See* section-by-section analysis of §§ 1005.15(c)(2) and 1005.18(b)(2)(i)(A).

The Bureau requests comment on its proposed clarification of the prohibition on compulsory use of specific accounts for receipt of government benefits. The Bureau also seeks comment on whether a similar restriction should be extended to other types of prepaid accounts (other than payroll card accounts and government benefit accounts), such as cards used by post-secondary educational institutions for financial aid disbursements or insurance companies to pay out claims. In particular, the Bureau seeks comment on how consumers are enrolled in these other types of prepaid accounts, whether those enrollment methods involve concerns similar to those addressed above regarding prepaid cards for distribution of government benefits, and what the impact, if any, would be of expanding this provision to other types of prepaid accounts. Finally, the Bureau seeks comment on whether other interventions are appropriate with respect to prepaid products distributed by employers, government entities, educational institutions, and other third parties in connection with the payment of funds to particular groups.

Section 1005.12 Relation to Other Laws

12(a) Relation to the Truth in Lending Act

Section 1005.12(a) provides guidance on whether the issuance provisions in Regulation E § 1005.5 or the unsolicited issuance provisions in Regulations Z § 1026.12(a) apply where access devices under Regulation E also are credit cards under Regulation Z. (For discussion of when this may occur, see the Regulation Z proposal, below.) In addition, § 1005.12(a) also provides guidance on how the provisions on liability for unauthorized use and for resolving errors in Regulation E §§ 1005.6 and 1005.11 and Regulation Z §§ 1026.12(b) and 1026.13 interact where a credit transaction is incidental to an electronic fund transfer.

Issuance Rules

Consistent with EFTA section 911(a) (15 U.S.C. 1693i(a)), existing § 1005.5(a) provides that a financial institution generally may issue an access device to a consumer only: (1) In response to an oral or written request for the device; or (2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor. Nonetheless, consistent with EFTA section 911(b) (15 U.S.C. 1693i(b)), § 1005.5(b) provides that a financial institution may distribute an access device to a consumer on an unsolicited basis if four enumerated situations are met.

In contrast, the issuance rules for a credit card under Regulation Z are more restrictive. Consistent with TILA section 132, Regulation Z § 1026.12(a), provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) In response to an oral or written request or application for the card; or (2) As a renewal of, or substitute for, an accepted credit card.

Section 1005.12(a) provides guidance on whether the issuance provisions in Regulation E or the unsolicited issuance provisions in Regulations Z apply where access devices under Regulation E also are credit cards under Regulation Z. Specifically, § 1005.12(a)(1) currently provides that EFTA and Regulation E subpart A govern: (1) The addition to an accepted credit card, as defined in Regulation Z (§ 1026.12, comment 12–2), of the capability to initiate electronic fund transfers; (2) The issuance of an access device that permits credit extensions pursuant to an overdraft line of credit (involving a preexisting agreement between a consumer and a financial institution to extend credit only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account), or under an overdraft service (as defined in Regulation E § 1005.17(a)); and (3) The addition of an overdraft service, as defined in § 1005.17(a), to an accepted access device. On the other hand, § 1005.12(a)(2) provides that TILA and Regulation Z apply to (1) the addition of a credit feature to an accepted access device; and (2) the issuance of a credit card that is also an access device, except the issuance of an access device that permits credit extensions pursuant to a preexisting overdraft line of credit or under an overdraft service. The application of these various provisions

[212] *See, e.g.,* Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government-Administered, General-Use Prepaid Cards* (July 2014), *available at http://www.federalreserve.gov/publications/files/2014_Prepaid_Cards_Final.pdf.* Nearly every State offers a prepaid card to disburse child support and unemployment insurance payments. *Id.* at 3.

[213] *See, e.g.,* Lauren K. Saunders & Jillian McLaughlin, *2013 Survey of Unemployment Prepaid Cards: States Save Workers Millions in Fees; Thumbs Down on Restricting Choice* (Jan. 2013), *available at http://www.nclc.org/images/pdf/pr-reports/report-prepaid-card-2013.pdf.*

to prepaid accounts and proposed revisions to the relevant prongs of § 1005.12 are discussed below.

Generally, the proposal would amend § 1005.12(a) to provide that the unsolicited issuances rules in Regulation Z § 1026.12(a) apply to the addition of a credit feature or plan to an access device for a prepaid account where the credit feature or plan would make the access device into a credit card under Regulation Z, even if the credit feature is structured as an overdraft line of credit.

First, as noted, § 1005.12(a)(1)(ii) provides that the issuance rules of EFTA and Regulation E subpart A govern the issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 1005.17(a). Current comment 12(a)–2 then explains that for access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance), known as an overdraft credit plan, or an overdraft service, as defined in § 1005.17(a). For checking accounts, a consumer may have a preexisting agreement with the financial institution to cover checks that overdraft the account. This overdraft line of credit would be subject to Regulation Z. If a debit card is then added to access this overdraft line of credit under the preexisting agreement, § 1005.12(a)(1)(ii) provides that the debit card (which would also be a credit card under Regulation Z) may be issued under the issuance rules in Regulation E, instead of the issuance rules in Regulation Z. Regulation Z's issuance rules apply if there is another type of credit feature being added to a debit card that would make the debit card into a credit card; for example, one permitting direct extensions of credit that do not involve the asset account.

The proposal would amend § 1005.12(a)(1)(ii) to provide that this provision does not apply to access devices for prepaid accounts. Thus, even if an access device for a prepaid account is issued to access a preexisting overdraft plan, the access device would be subject to the unsolicited issuance rules in TILA and Regulation Z § 1026.12(a) when that overdraft plan would make the access device into a credit card under Regulation Z. *See* proposed § 1005.12(a)(2)(ii). The proposal also would move comment 12(a)–2 related to preexisting overdraft credit plans to proposed comment 12(a)–1 and would revise the comment to explain that it does not apply to access devices for prepaid accounts.

As discussed above, § 1005.12(a)(1)(ii) contemplates the situation where there is a preexisting agreement between a financial institution and the consumer for an overdraft line of credit where the institution will cover checks that overdraft the account and the Regulation E access device is issued to access this plan. For the reasons set forth in the section-by-section analysis of Regulation Z, the Bureau believes that credit card rules in Regulation Z, including the unsolicited issuance rules in § 1026.12(a), generally should apply to credit card accounts that are linked to prepaid accounts as discussed above. Consistent with the unsolicited issuance rules in Regulation Z § 1026.12(a), the Bureau is proposing these changes because it is concerned that unsolicited issuance of a prepaid card that can access an overdraft credit plan would pose risks to consumers. The Bureau seeks to ensure that prepaid account consumers are fully aware of the addition, or potential addition, of a credit feature to a prepaid account.

Similarly, the proposal would carve prepaid accounts out from § 1005.12(a)(1)(iii), which provides that the issuance rules in EFTA and Regulation E govern the addition of an overdraft service, as defined in § 1005.17(a), to an accepted access device. Current comment 12(a)–3 provides that the addition of an overdraft service, as that term is defined in § 1005.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Comment 12(a)–3 also explains that the provisions of Regulation E apply, including the liability limitations (§ 1005.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft debit card or ATM transaction may be assessed on the account (§ 1005.17). The proposal would amend § 1005.12(a)(1)(iii) to provide that this provision does not apply to access devices for prepaid accounts. The proposal also would move comment 12(a)–3 to proposed comment 12(a)–2 and revise the comment to indicate that this comment does not apply to access devices for prepaid accounts. As discussed in more detail in the section-by-section analysis of § 1005.17, the proposal would revise the term ''overdraft service'' as defined in § 1005.17(a) to exclude a credit plan that is accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z, because these credit plans would be subject to the provisions in Regulation Z.

Second, the proposal would also add references to prepaid accounts in portions of the regulation stating that certain activities are subject to TILA and Regulation Z issuance rules. For example, § 1005.12(a)(2)(i) currently provides that the unsolicited issuance rules of TILA section 132 and Regulation Z § 1026.12(a) apply to the addition of a credit feature to an accepted access device. The proposal would amend § 1005.12(a)(2)(i) to provide that the unsolicited issuance rules in TILA and Regulation Z § 1026.12(a) would apply to the addition of a credit feature or plan to an accepted access device, including an access device for a prepaid account, that would make the access device into a credit card under Regulation Z. Proposed comment 12(a)–4 would explain that Regulation Z governs the addition of any credit feature or plan to an access device for a prepaid account where the access device also would be a credit card under Regulation Z. Proposed comment 12(a)–4 would note that Regulation Z (§ 1026.2(a)(20), comment 2(a)(20)–2(ii)) provides guidance on whether a program constitutes a credit plan, and that Regulation Z (§ 1026.2(a)(15)(i), comment 2(a)(15)–2) defines the term credit card and provides examples of cards or devices that are and are not credit cards.

Similarly, § 1005.12(a)(2)(ii) currently provides that TILA and Regulation Z apply to the issuance of a credit card that is also an access device, except as provided in § 1005.12(a)(1)(ii). Proposed comment 12(a)–3 would cross reference proposed § 1005.18(g) and Regulation Z § 1026.12(h), which would prevent prepaid cards from accessing credit card accounts when the prepaid cards are issued. For the reasons discussed in the section-by-section analysis of proposed § 1005.18(g), proposed § 1005.18(g)(1)(ii) would prohibit a financial institution from allowing a prepaid account access device to access a credit plan subject to Regulation Z that would make the access device into a credit card at any time prior to 30 calendar days after the prepaid account has been registered. In addition, proposed § 1005.18(g)(1)(i) also would prohibit a financial institution from opening a credit card account subject to Regulation Z for the holder of a prepaid account, or providing a solicitation or application to open a credit card account subject to Regulation Z that would be accessed by the access device for a prepaid account

that is a credit card, prior to 30 calendar days after the prepaid account has been registered. For the reasons discussed in the section-by-section analysis of Regulation Z proposed § 1026.12(h), proposed § 1026.12(h) would require a credit card issuer to wait at least 30 calendar days from prepaid account registration before opening a credit card account for a holder of a prepaid account, or providing a solicitation or application to the holder of the prepaid account to open a credit card account, that would be accessed by the access device for a prepaid account that is a credit card.

The Bureau believes that its proposed application of Regulations E and Z to the issuance of access devices strikes an appropriate balance between the regulations. The proposal recognizes that prepaid card issuers are not likely to have preexisting agreements with the customer to extend overdraft credit prior to issuing the prepaid card. The Bureau believes in particular that the addition of a credit feature to an accepted prepaid access device causes a significant transformation with respect to a prepaid account. The Bureau believes that applying the Regulation Z issuance rules to the addition of such a credit feature to a prepaid access device will help ensure that consumers are fully aware of the implications of their decision to effect such a transformation.

Rules Applicable to Limits on Liability for Unauthorized Use and to Billing Errors Procedures

Section 1005.6 generally sets forth provisions for when a consumer may be held liable, within the limitations described in § 1005.6(b), for an unauthorized electronic fund transfer involving the consumer's account. Section 1005.11 generally sets forth the procedures for resolving errors relating to electronic fund transfers involving a consumer's account. Section 1005.18(e) sets forth a consumer's liability for unauthorized electronic fund transfers and the procedures for investigating errors related to electronic fund transfers involving prepaid accounts. *See generally* section-by-section analysis of proposed § 1005.18(e).

Relatedly, Regulation Z § 1026.12(b) sets forth limits on the amount of liability that a credit card issuer may impose on a consumer for unauthorized use of a credit card. Regulation Z § 1026.13 generally sets forth error resolution procedures for billing errors that relate to extensions of credit that are made in connection with open-end accounts or credit card accounts.

Regulation E § 1005.12(a)(1)(iv) currently provides guidance on how the provisions on limits on liability for unauthorized use and the provisions setting forth error resolution procedures under Regulation E and Regulation Z apply when credit is extended incident to an electronic fund transfer. Specifically, § 1005.12(a)(1)(iv) provides that EFTA and Regulation E govern a consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit that occurs pursuant to an overdraft line of credit (under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account), or under an overdraft service, as defined in § 1005.17(a). Comment 12(a)–1 provides that for transactions involving access devices that also function as credit cards, whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply. If the transaction debits a checking account only (with no credit extended), the provisions of Regulation E apply. If the transaction debits a checking account but also draws on an overdraft line of credit attached to the account, Regulation E's liability limitations apply, in addition to Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the checking account).[214] If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from a checking account, but also is used to obtain unauthorized cash advances directly from a line of credit that is separate from the checking account, both Regulation E and Regulation Z apply. Comment 12(a)–1 also sets forth examples that illustrate these principles.

With respect to limits on liability for unauthorized use, § 1005.12(a) and comment 12(a)–1 are consistent with EFTA section 909(c), which applies EFTA's limits on liability for unauthorized use to transactions which involve both an unauthorized electronic fund transfer and an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn. 15 U.S.C. 1693g(c). In adopting rules in 1980 to implement EFTA, the Board generally applied Regulation E's error resolution procedures to credit transactions that are incident to an electronic fund transfer involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.[215] In proposing these rules, the Board stated that the proposed rule would simplify procedures for financial institutions where an electronic fund transfer results in both a debit to a consumer's account and a credit extension.[216]

For the reasons discussed in more detail in the section by section analysis of Regulation Z proposed § 1026.13(i), the Bureau proposes to amend § 1005.12(a)(1)(iv) by moving the current language to proposed § 1005.12(a)(1)(iv)(A) and applying it to access devices that do not access prepaid accounts. The Bureau also proposes to add proposed § 1005.12(a)(1)(iv)(B) to provide that with respect to a prepaid account, EFTA and Regulation E govern a consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit, under a credit plan subject to Regulation Z subpart B, that is incident to an electronic fund transfer when the consumer's prepaid account is overdrawn. Proposed § 1005.12(a)(1)(iv)(B) that applies to credit in connection with a prepaid account is similar but not the same as proposed § 1005.12(a)(1)(iv)(A) which applies to accounts other than prepaid accounts. Like proposed § 1005.12(a)(1)(iv)(A), proposed § 1005.12(a)(1)(iv)(B) generally would apply Regulation E's limits on liability for unauthorized use and error resolution procedures to transactions that are partially funded through an

[214] Section 1026.13(d) provides that a consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to a disputed amount reflected on the consumer's credit card bill. It also provides that if the cardholder has enrolled in an automatic payment plan, the card issuer shall not deduct any part of the disputed amount or related finance or other charges from the consumer's asset account if the consumer provides to the card issuer a billing error notice that the card issuer receives any time up to 3 business days before the scheduled payment date. Section 1026.13(g) sets forth requirements governing what a creditor must do if it determines that a consumer owes all or part of the disputed amount and related finance or other charges.

[215] 45 FR 8249, 8257 (Feb. 6, 1980).

[216] 44 FR 25850, 25857 (May 3, 1979).

electronic fund transfer using a prepaid card and partially funded through credit under a plan that is accessed by a prepaid card when the consumer's prepaid account is overdrawn.[217]

However, unlike proposed § 1005.12(a)(1)(iv)(A), proposed § 1005.12(a)(1)(iv)(B) would not focus on whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's prepaid account is overdrawn or to maintain a specified minimum balance in the consumer's prepaid account. Instead, proposed § 1005.12(a)(1)(iv)(B) focuses on whether credit is extended under a ''plan'' when the consumer's prepaid account is overdrawn and the plan is subject to the provisions in Regulation Z subpart B. For example, a credit plan that is accessed by a prepaid card that is a credit card would be subject to the provisions of subpart B. Under the proposal, a prepaid card can be a credit card under Regulation Z even if the creditor retains discretion not to pay the credit transactions. As discussed in the section-by-section analysis of Regulation Z proposed § 1026.2(a)(15)(i), proposed comment 2(a)(15)–2.i.F would provide that the term ''credit card'' for purposes of Regulation Z includes a prepaid card that is a single device that may be used from time to time to access a credit ''plan,'' except if the prepaid card only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) such as an application fee to apply for credit or a late payment fee and is not payable by written agreement in more than four installments. As discussed in the section-by-section analysis of proposed Regulation Z § 1026.2(a)(20), with respect to credit that is accessed by a prepaid card, a ''plan'' includes a program where the consumer is obligated contractually to repay the credit. For example, such a plan includes a program under which a creditor routinely pays transactions when a consumer has insufficient or unavailable funds in a prepaid account and the consumer is obligated contractually to repay those transactions. Under the proposal, such a program would constitute a plan notwithstanding that the creditor retains discretion not to pay such transactions. Thus, proposed § 1005.12(a)(1)(iv)(B) focuses on whether credit is extended under a ''plan'' that is subject to the provisions of subpart B, rather than whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

Comment 12(a)–1 provides guidance on determining the applicable regulation related to liability and error resolution, primarily focusing on examples of when a debit card that also is a credit card under Regulation Z accesses a checking account. Under the proposal, comment 12(a)–1 would be moved to proposed comment 12(a)–5. The proposal also would amend proposed comment 12(a)–5 to provide guidance on determining the applicable regulation related to liability and error resolution for overdraft credit plans in connection with asset accounts, including prepaid accounts.

Proposed comment 12(a)–5.i would also explain that for an account other than a prepaid account where credit is extended incident to an electronic fund transfer under an agreement to extend overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions apply, in addition to Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). With respect to an account other than for a prepaid account, incidental credit that is not extended under an agreement between the consumer and the financial institution where the financial institution agrees to extend credit is governed solely by the error resolution procedures in Regulation E, and Regulation Z § 1026.23(d) and (g) do not apply.

Proposed comment 12(a)–5 would provide that with respect to a prepaid account where credit is extended under a credit plan that is subject to Regulation Z subpart B, Regulation E's liability limitations and error resolution provisions apply, in addition to Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). Under the proposal, a credit plan is subject to Regulation Z subpart B if the credit plan is accessed by an access device that is a credit card under Regulation Z or the credit plan is open-end credit. An access device for a prepaid account would not be a credit card if the access device only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments. *See* Regulation Z comment 2(a)(15)–2.i.F. Proposed comment 12(a)–5 would explain that incidental credit under a credit plan that only can be accessed by an access device for a prepaid account that is not a credit card is not subject to Regulation Z subpart B and is governed solely by the error resolution procedures in Regulation E because the credit plan is not accessed by a credit card and the plan is not open-end credit. In this case, Regulation Z § 1026.13(d) and (g) do not apply.

Comment 12(a)–1.i and ii would be moved to proposed comment 12(a)–5–.ii and iii, respectively, and would be revised to indicate how the principles and examples apply generally to asset accounts, including checking accounts and prepaid accounts.

The Bureau believes that it is appropriate to apply the limits on liability and the error resolution procedures in Regulation E generally to transactions that debit a prepaid account but also draw on an overdraft plan that is subject to Regulation Z subpart B. The Bureau believes that its proposed approach is consistent with EFTA section 909(c), which applies EFTA's limits on liability for unauthorized use to transactions which involve both an unauthorized electronic fund transfer and an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn. 15 U.S.C. 1693g(c). An unauthorized electronic fund transfer on a prepaid account generally would be subject to the limits on liability in § 1005.6 and proposed § 1005.18(e); an unauthorized electronic fund transfer on a prepaid account also is an error for purposes of error resolution procedures set forth in § 1005.11 and proposed § 1005.18(e). *See* § 1005.11(a)(1)(i). Although billing errors under Regulation Z § 1026.13(a) include a broader category than only unauthorized use, the Bureau believes it is necessary and proper to apply Regulation E's error resolution provisions and limited Regulation Z error resolution provisions to these transactions, to facilitate compliance with EFTA section 908 and TILA section 161 on error resolution. The Bureau is concerned that conflicting provisions could apply to transactions that debit a prepaid account but also draws on an overdraft plan subject to Regulation Z subpart B if Regulation E's provisions applied to limits on liability

[217] This treatment would not apply to plans accessed by an account number that is a credit card under Regulation Z, where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. See the discussion of Regulation Z § 1026.13(i) below.

for unauthorized use, and Regulation Z's provisions generally apply to investigation of billing errors, including transactions involving unauthorized use. To avoid these potential conflicts and to facilitate compliance, under proposed Regulation Z § 1026.12(a)(1)(v), if the transaction debits a prepaid account but also draws on an overdraft plan subject to Regulation Z subpart B, Regulation E's liability limitations and error resolution procedures apply to the entire transaction and Regulation Z's error resolution rules in § 1026.13(d) and (g) apply to the credit portion of the transaction. This approach is also consistent with the existing provisions in § 1005.11(a)(1)(iv) and Regulation Z § 1026.13(i), which applies Regulation E's liability limitation and error resolution procedures to extensions of credit that is incident to an electronic fund transfer.

The Bureau solicits comment on this approach. The Bureau also solicits comment on whether there are any other preferable approaches to determining how the liability limitations and error resolution procedures in Regulations E and Z should apply to transactions that debit prepaid accounts but also draw on overdraft plans that are subject to Regulation Z subpart B.

12(b) Preemption of Inconsistent State Laws

In 2013, the Bureau published a final determination as to whether certain laws of Maine and Tennessee relating to unclaimed gift cards are inconsistent with and preempted by EFTA and Regulation E.[218] The Bureau concluded that it had no basis for concluding that the provisions at issue in Maine's unclaimed property law relating to gift cards are inconsistent with, or therefore preempted by, Federal law. The Bureau did determine, however, that one provision in Tennessee's unclaimed property law relating to gift cards is inconsistent with, and therefore preempted by, Federal law. The Bureau's notice of its preemption determination stated that the determination would also be reflected in the commentary accompanying Regulation E.

The Bureau proposes to add a summary of its preemption determination with respect to Tennessee's unclaimed property law as comment 12(b)–4. Proposed comment 12(b)–4 would state that the Bureau had determined that a provision in the State law of Tennessee is preempted by the Federal law, effective April 25, 2013. Specifically, section 66–29–116 of Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act is preempted to the extent that it permits gift certificates, store gift cards, and stored-value cards, as defined in § 1005.20(a), to be declined at the point-of-sale sooner than the gift certificates, store gift cards, or stored value cards and their underlying funds are permitted to expire under § 1005.20(e).

Existing comment 12(b)–2 states, in part, that the Bureau recognizes state law preemption determinations made by the Board prior to July 21, 2011, unless and until the Bureau makes and publishes any contrary determination. The Bureau proposes to make this statement into a standalone comment in proposed comment 12(b)–2 under the heading *Preemption determinations generally.* The Bureau proposes to renumber the remainder of existing comment 12(b)–2 as proposed comment 12(b)–3, to make the heading for that comment *Preemption determination—Michigan* for the sake of clarity, and to update proposed comment 12(b)–3.i through .iv to provide full citations to the preempted Michigan law at issue therein, which appear in chapter 488 of the Michigan Compiled Laws. Additionally, the Bureau proposes adding language in proposed comment 12(b)–3.iv to clarify that the preemption of sections 488.17 and 488.18 of Michigan law does not apply to transfers of $15 or less, which, pursuant to existing § 1005.9(e), are not subject to § 1005.9. Section 1005.9(e) (then § 205.9(e)) was added by the Board in 2007 to eliminate the requirement to provide terminal receipts for transactions of $15 or less.[219]

The Bureau seeks comment on this portion of its proposal.

Section 1005.15 Electronic Fund Transfer of Government Benefits

Section 1005.15 of Regulation E currently contains provisions specific to certain accounts established by government agencies for distributing government benefits to consumers electronically, such as through ATMs or POS terminals. As discussed in more detail above, the Board amended Regulation E in 1994 to specifically address such accounts. In 1997, the Board modified Regulation E to exempt ''needs-tested'' EBT programs established or administered under State or local law in response to a 1996 change to EFTA made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.[220] All accounts used to distribute benefits for Federally administered programs (including needs-tested EBT programs) and non-needs tested State and local programs, such as those used to distribute unemployment insurance payments, pensions, and child support, are currently covered by § 1005.15.[221]

Although the Bureau is proposing to include these accounts in the general definition of prepaid account in proposed § 1005.2(b)(3), as discussed above, the Bureau is proposing for ease of administration to modify existing § 1005.15 to address the proposed revisions for government benefit accounts, rather than subsuming the rules for such accounts into proposed § 1005.18 as the Bureau proposes to do with respect to payroll card accounts. These proposed revisions and additions would generally align the requirements in § 1005.15 with the proposed requirements for prepaid accounts generally in § 1005.18, which are discussed in more detail in the section-by-section analysis of proposed § 1005.18 below.

15(a) Government Agency Subject to Regulation

Existing § 1005.15(a)(1) provides that a government agency is deemed to be a financial institution for purposes of EFTA and Regulation E if it directly or indirectly issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account, other than needs-tested benefits in a program established under State or local law or administered by a State or local agency. It also provides that the agency shall comply with all applicable requirements of EFTA and Regulation E, except as provided in § 1005.15. The Bureau is proposing to adjust the final sentence of § 1005.15(a)(1) to reflect that proposed § 1005.15, as discussed in detail below, is no longer only providing an exception to a Regulation E requirement. The Bureau is otherwise not proposing to modify § 1005.15(a)(1).

Existing § 1005.15(a)(2) defines, for purposes of § 1005.15, the term ''account'' to mean an account established by a government agency for distributing government benefits to a consumer electronically, such as through ATMs or POS terminals, but does not include an account for distributing needs-tested benefits in a program established under State or local law or administered by a State or local agency. For ease of reference, the Bureau is proposing to define such an account as a ''government benefit

[218] 78 FR 24386, 24391 (Apr. 25, 2013).

[219] *See* 72 FR 36589 (July 5, 2007).

[220] Public Law 104–193, 110 Stat. 2105 (1996).

[221] *See, e.g.,* 62 FR 43467 (Aug. 14, 1997).

account;'' no substantive change is intended by the addition of this definition.

The Bureau does not intend for the proposed revisions in § 1005.15 to alter the programs or agencies to which § 1005.15 is applicable. Thus, the Bureau also does not expect that its proposed revisions to § 1005.15 would impose significant burden on government agencies distributing funds via government benefit accounts.

The Bureau understands that government benefit account programs are typically administered by financial institutions pursuant to a contract between the institution and the agency.[222] The Bureau is not aware of any covered programs run solely by an agency. Although the Bureau does not propose to substantively revise § 1005.15(a), the Bureau requests comment as to whether these provisions in existing § 1005.15(a) remain relevant in light of both current industry practices and the Bureau's proposed definition for ''prepaid account'' in § 1005.2(b)(3). Specifically, the Bureau seeks comment on the effect on consumers and covered government benefit account programs were the Bureau to remove it.

The Bureau notes that although it is proposing to maintain § 1005.15 for government benefit accounts, there is some question as to whether separate provisions remain necessary or whether the requirements for such accounts could be subsumed into proposed § 1005.18. The Bureau thus requests comment on whether, in light of the proposal herein to address all other types of covered prepaid accounts in § 1005.18, the Bureau should subsume all requirements for government benefit accounts into § 1005.18 as well.

15(b) Issuance of Access Devices

Existing § 1005.15(b) explains that for purposes of § 1005.15, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated. The Bureau is not proposing to modify § 1005.15(b).

15(c) Pre-Acquisition Disclosure Requirements

The Bureau is proposing new disclosure requirements for government benefit accounts that would be provided before a consumer acquires a government benefit account. The requirements in proposed § 1005.15(c) would be in addition to the initial disclosure requirements in existing § 1005.7(b) and would correspond to the requirements in proposed § 1005.18(b) for prepaid accounts generally.[223]

EFTA section 905(a) sets forth disclosure requirements for accounts subject to the Act.[224] In addition to these disclosures, the Bureau is proposing to use its authority under EFTA sections 904(a) and (c), 905(a), and section 1032(a) of the Dodd-Frank Act to require government agencies to provide disclosures prior to the time a consumer acquires a government benefit account. As discussed in more detail in the section-by-section analysis of proposed § 1005.18(b)(1)(i) below for prepaid accounts, the Bureau believes that adjustment of the timing requirement is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of government benefit account consumers, because the proposed revision will assist consumers' understanding of the terms and conditions of their government benefit accounts.

The Bureau is proposing in new § 1005.15(c) to extend to government benefit accounts the same pre-acquisition disclosure requirements proposed for prepaid accounts, which are discussed in detail in the section-by-section analysis of proposed § 1005.18(b) below. Specifically, proposed § 1005.15(c)(1) would state that before a consumer acquires a government benefit account, a government agency shall comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in proposed § 1005.18(b), in accordance with the timing requirements of proposed § 1005.18(h).

To address issues of compulsory use (*see* existing § 1005.10(e)(2) and proposed comment 10(e)(2)-2), the Bureau is proposing that a notice be provided at the top of the short form to highlight to consumers that they are not required to accept a government benefit account. Specifically, proposed § 1005.15(c)(2) would state that before a consumer acquires a government benefit account, the agency must provide a statement pursuant to proposed § 1005.18(b)(2)(i)(A) that the consumer does not have to accept the government benefit account and that the consumer can ask about other ways to get their benefit payments from the agency instead of receiving them through the account, in a form substantially similar to proposed Model Form A–10(a). As explained in the section-by-section analysis of § 1005.10(e)(2) above, the Bureau is proposing to clarify that Regulation E does not permit a government agency to require individuals to receive government benefits by direct deposit to any particular institution. As noted, the Bureau believes it is important for consumers to realize they have the option of not accepting a government benefit account before they acquire the account, and that receiving such notice at the top of the short form will help to ensure consumers are aware of this right.

Proposed comment 15(c)–1 would explain that Model Form A–10(a) contains a model form for the pre-acquisition short disclosure requirements for government benefit accounts pursuant to § 1005.15(c). Government agencies may use Sample Form A–10(e) of Appendix A to this part to comply with the pre-acquisition long form disclosure requirements of § 1005.15(c)(1).

Proposed comment 15(c)–2 would reiterate that § 1005.18(b)(1)(i) generally requires delivery of both the short form disclosure required by § 1005.18(b)(2)(i) and the long form disclosure required by § 1005.18(b)(2)(ii) before a consumer acquires a prepaid account. Proposed comment 15(c)–2.i would provide an example illustrating when a consumer receives disclosures before acquisition of an account for purposes of proposed § 1005.15(c)(1). Specifically, the example would address a situation in which a government agency informs a consumer that she can receive distribution of benefits via a government benefit account in the form of a prepaid card. In the first example, the consumer receives the short form and long form disclosures to review at the time the consumer receives benefits eligibility information from the agency. After

[222] *See, e.g.,* Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government-Administered, General-Use Prepaid Cards,* at 3 (July 2014), *available at http://www.federalreserve.gov/publications/es/2014_Prepaid_Cards_Final.pdf.*

[223] The Bureau is also proposing, for purposes of government benefit accounts, to expand the requirement in existing § 1005.7(b)(5) to disclose fees related to EFTs to cover all fees related to the government benefit account, as discussed below in the section-by-section analysis of proposed § 1005.15(f). *See also* proposed § 1005.18(f) (proposing the same requirement for prepaid accounts).

[224] Specifically, EFTA section 905(a) states that ''[t]he terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau.'' 15 U.S.C. 1693c(a)

receiving the disclosures, the consumer agrees to receive benefits via the government benefit account. The comment explains that these disclosures were provided to the consumer pre-acquisition, and the agency has complied with proposed § 1005.15(c)(1). By contrast, if the consumer does not receive the short form and long form disclosures to review until the time at which the consumer receives the prepaid card, these disclosures were provided to the consumer post-acquisition and were not provided in compliance with proposed § 1005.15(c)(1).

Proposed comment 15(c)–3 would explain that the disclosures and notice required by § 1005.15(c)(1) and (2) may be given in the same process or appointment during which the consumer acquires or agrees to acquire a government benefit account. When a consumer receives benefits eligibility information and signs up or enrolls to receive benefits during the same process or appointment, a government agency that gives the disclosures and notice required by proposed § 1005.15(c)(1) and (2) before issuing a government benefit account complies with the timing requirements of proposed § 1005.15(c).

15(d) Access to Account Information

15(d)(1) Periodic Statement Alternative

EFTA section 906(c) requires that a financial institution provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Section 1005.9(b), which implements EFTA section 906(c), generally requires a periodic statement for each monthly cycle in which an electronic fund transfer occurred or, if there are no such transfers, a periodic statement at least quarterly.[225] Financial institutions must deliver periodic statements in writing and in a form that the consumer can keep, unless consent is received for electronic delivery or unless Regulation E provides otherwise. *See* §§ 1005.4(a)(1) and 1005.9(b).

In the 1994 EBT Rule, the Board adopted a final rule that modified the periodic statement requirement for government benefit accounts. Pursuant to that rule, existing § 1005.15(c) explains that government agencies can provide periodic statements that comply with the general provisions in Regulation E, or alternatively, the agency must make available to the consumer: (1) The account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal, or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and (2) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days.

The Bureau is proposing to revise existing § 1005.15(c) as new § 1005.15(d)(1), which would generally align the periodic statement alternative for government benefit accounts with the proposed alternative for prepaid accounts discussed below in the section-by-section analysis of proposed § 1005.18(c). Specifically, the Bureau is proposing in § 1005.15(d)(1) an alternative to the periodic statement requirement that would allow government agencies to instead provide access to account balance by telephone and at a terminal, 18 months of transaction history online, and 18 months written transaction history upon request. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers (including government benefit account consumers), the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to continue the exception to the periodic statement requirements of EFTA section 906(c) for government benefit accounts and to modify that exception in Regulation E to more closely align it with the proposed requirements for prepaid accounts generally. *See also* the section-by-section analysis of proposed § 1005.18(c)(1) below.

Proposed § 1005.15(d)(1) and (1)(i) retain the existing language in current § 1005.15(c) and (c)(1), and would state that a government agency need not furnish periodic statements required by § 1005.9(b) if the agency makes available to the consumer the consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer). This language is unchanged from existing § 1005.15(c)(1). Existing § 1005.18(b)(1)(i) for payroll card accounts and proposed § 1005.18(c)(1)(i) for prepaid accounts, however, do not include the requirement to provide balance information at a terminal. As discussed below in the section-by-section analysis of proposed § 1005.18(c)(1)(i), the Bureau is seeking comment on whether a similar requirement to provide balance information at a terminal should be added to the requirements of proposed § 1005.18(c) for prepaid accounts generally. The Bureau requests comment on whether, alternatively, the requirement to provide balance information for government benefit accounts at a terminal should be eliminated from § 1005.15 given the other enhancements proposed herein and for parity with proposed § 1005.18.

The second piece of the proposed periodic statement alternative for government benefit accounts, proposed § 1005.15(d)(1)(ii), would be an electronic history of the consumer's account transactions, such as through a Web site, that covers at least 18 months preceding the date the consumer electronically accesses the account. As noted above, the requirement to provide an electronic history of a consumer's account transactions would be new to government benefit accounts. This provision would mirror proposed § 1005.18(c)(1)(ii) for prepaid accounts generally. The Bureau does not believe that this proposed requirement would impose significant burden on government agencies, as the Bureau believes that may government benefit account programs already provide electronic access to account information. For example, the Bureau found that all the government benefit card programs included in its Study of Prepaid Account Agreements already provide online access to account information[226] and, in most cases, electronic periodic statements as well.[227]

The third piece of the proposed periodic statement alternative, proposed § 1005.15(d)(1)(iii), would be a requirement to provide a written history of the consumer's account transactions promptly in response to an oral or written request and that covers at least

[225] The periodic statement must include transaction information for each EFT, the account number, the amount of any fees assessed, the beginning and ending account balance, the financial institution's address and telephone number for inquiries, and a telephone number for preauthorized transfers. *See* § 1005.9(b).

[226] *See* Study of Prepaid Account Agreements, at 18 tbl.5. All account agreements reviewed for cards used to distribute government benefits indicated that electronic access to account information is available. The Bureau acknowledges that this selection may have some bias as all account agreements, including those for government benefit programs, reviewed in the Study were obtained online; as such, those programs may be more likely than others to provide electronic access to account information.

[227] The Study of Prepaid Account Agreements found that 95.38 percent of account agreements for government benefit cards indicate that those programs provide electronic periodic statements (in addition to electronic access to account history information). *See id.,* at 20 tbl.7.

18 months preceding the date the agency receives the consumer's request. This provision is similar to existing § 1005.15(c)(2), but has been modified to change the time period covered by the written history from 60 days to 18 months, and to otherwise mirror the language used in proposed § 1005.18(c)(1)(iii) for prepaid accounts generally.

15(d)(2) Additional Access to Account Information Requirements

The Bureau is proposing new § 1005.15(d)(2), which would require that a government agency comply with the account information requirements applicable to prepaid accounts as set forth in proposed § 1005.18(c)(2), (3), and (4). As discussed in more detail below, proposed § 1005.18(c)(2) requires that the electronic and written histories in the periodic statement alternative must include the information set forth in § 1005.9(b). This provision currently exists for payroll card accounts in existing § 1005.18(b)(2), but does not presently appear in § 1005.15 for government benefit accounts. Proposed § 1005.18(c)(3) would require disclosure of all fees assessed against the account, in both the history of account transactions provided as periodic statement alternatives, as well as in any periodic statement. Proposed § 1005.18(c)(4) would require disclosure, in both the history of account transactions provided as periodic statement alternatives, as well as in any periodic statement, monthly and annual summary totals of fees imposed on and the total amount of deposits and debits made to a prepaid account. Proposed comment 15(d)–1 would refer to proposed comments 18(c)–1 through –5 for guidance on access to account information requirements.

To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers (including government benefit account consumers), the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to modify the periodic statement requirements of EFTA section 906(c) to require inclusion of all fees charged and a summary total of both monthly and annual fees. *See also* the section-by-section analysis of proposed § 1005.18(c)(3) and § 1005.18(c)(4) below. These proposed revisions will assist consumers' understanding of the account activity on their government benefit accounts. In addition, the Bureau is also using its disclosure authority pursuant to the Dodd-Frank Act section 1032(a) because the Bureau believes that disclosure of all fees and account activity summaries ensure that the features of government benefit accounts, over the term of the account, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with government benefit accounts.

15(e) Modified Disclosure Requirements

Existing § 1005.15(d) provides that a government agency that follows the periodic statement alternative in existing § 1005.15(c) must modify certain initial and ongoing disclosures given to consumers. Existing § 1005.15(d)(1) requires modification of the initial disclosures given pursuant to § 1005.7(b) to reflect the methods a consumer can employ to obtain account balance information and copies of written account history, and to address corresponding changes in the timing requirements for the error resolution notice required by § 1005.7(b)(10). Existing § 1005.15(d)(2) addresses modification of the annual error resolution notice required by § 1005.8(b). Existing § 1005.15(d)(3) and (4) adjust the triggering of the 60-day period for reporting unauthorized transfers pursuant to the limited liability provisions in § 1005.6(b)(3) and the error resolution provisions of § 1005.11. Because the Bureau is proposing to modify the periodic statement alternative for government benefit accounts in proposed § 1005.15(d)(1), the Bureau is proposing to modify the requirements in existing § 1005.15(d), renumbered as new § 1005.15(e), to adjust the corresponding timing provisions therein and to align with the requirements of proposed § 1005.18(d) for prepaid accounts generally, discussed below.

15(e)(1) Initial Disclosures

15(e)(1)(i) Account Information

Proposed § 1005.15(e)(1)(i) would require that a government agency modify the disclosures required under § 1005.7(b) by disclosing a telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of a Web site, and a summary of the consumer's right to receive a written account history upon request (in place of the a periodic statement required by § 1005.7(b)(6)), including a telephone number to call to request a history. The disclosure required by proposed § 1005.15(e)(1)(i) may be made by providing a notice substantially similar to the notice contained in proposed appendix A–5.

15(e)(1)(ii) Error Resolution

Mirroring existing § 1005.15(d)(1)(iii), proposed § 1005.15(e)(1)(ii) would require that a government agency modify the disclosures required under § 1005.7(b) by providing a notice concerning error resolution that is substantially similar to the notice contained in proposed appendix A–5, in place of the notice required by § 1005.7(b)(10). These proposed modifications are discussed below in the section-by-section analysis of appendix A–5.

15(e)(2) Annual Error Resolution Notice

Mirroring existing § 1005.15(d)(2), proposed § 1005.15(e)(2) would require that an agency provide an annual notice concerning error resolution that is substantially similar to the notice contained in proposed appendix A–5, in place of the notice required by § 1005.8(b). The Bureau is proposing to add that, alternatively, the agency may include on or with each electronic or written history provided in accordance with proposed § 1005.15(d)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph (b) of appendix A–3, modified as necessary to reflect the error resolution provisions set forth in proposed § 1005.15. The Bureau is proposing to allow each electronic and written history to include an abbreviated error resolution notice, in lieu of an annual notice, for parity with proposed § 1005.18(d)(2) for prepaid accounts generally, which is based on existing § 1005.18(c)(2) for payroll card accounts.

The Bureau seeks comment, however, on whether it should continue to require annual error resolution notices for government benefit accounts in certain circumstances, such as those accounts for which a consumer has not accessed an electronic history or requested a written history in an entire calendar year and thus would not have received any error resolution notice during the course of the year.

15(e)(3) Modified Limitations on Liability Requirements

EFTA section 909 governs consumer liability for unauthorized electronic fund transfers. EFTA section 908 governs the timing and other requirements for consumers and financial institutions on error resolution, including provisional credit. EFTA section 909 on consumer liability is implemented by existing § 1005.6. For accounts under Regulation E generally,

including payroll card accounts, § 1005.6(a) provides that a consumer may be held liable for an unauthorized electronic fund transfer resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met.[228] If the consumer provides timely notice to the financial institution within two business days of learning of the loss or theft of the access device, the consumer's liability is the lesser of $50 or the amount of unauthorized transfers made before giving notice. § 1005.6(b)(1). If timely notice is not given, the consumer's liability is the lesser of $500 or the sum of (1) the lesser of $50 or the amount of unauthorized transfers occurring within two business days of learning of the loss/theft and (2) the amount of unauthorized transfers that occur after two business days but before notice is given to the financial institution. § 1005.6(b)(2). Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement in order to avoid liability for subsequent transfers.

For government agencies that follow the periodic statement alternative in existing § 1005.15(c), existing § 1005.15(d)(3) provides that for purposes of § 1005.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall being with the transmittal of a written account history or other account information provided to the consumer under existing § 1005.15(c). The Bureau notes that this provision only modifies the 60-day period for consumers to report an unauthorized transfer and does not alter any other provision of § 1005.6.

Proposed § 1005.15(e)(3) would modify existing § 1005.15(d)(3) to adjust the timing requirements for reporting unauthorized transfers based on the proposed requirement to provide consumers with electronic account history under proposed § 1005.15(d)(1)(ii), as well as written history upon request. Specifically, proposed § 1005.15(e)(3)(i) would provide that for purposes of existing § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of the date the consumer electronically accesses the consumer's account under proposed § 1005.15(d)(1)(ii), provided that the electronic history made available to the consumer reflects the unauthorized transfer, or the date the agency sends a written history of the consumer's account transactions requested by the consumer under proposed § 1005.15(d)(1)(iii) in which the unauthorized transfer is first reflected.

Proposed § 1005.15(e)(3)(ii), which mirrors existing § 1005.18(c)(3)(ii) and proposed § 1005.18(e)(1)(ii), would provide that an agency may comply with proposed § 1005.15(e)(3)(i) by limiting the consumer's liability for an unauthorized transfer as provided under existing § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

The Bureau notes that nothing in this proposal modifies the requirement to comply with existing § 1005.6(b)(4), regarding an extension of time limits if a consumer's delay in notifying the agency was due to extenuating circumstances, nor any other provisions of existing § 1005.6.

15(e)(4) Modified Error Resolution Requirements

EFTA section 908 governs the timing and other requirements for consumers and financial institutions on error resolution, including provisional credit, and is implemented for accounts under Regulation E generally, including government benefit accounts, in § 1005.11. Section 1005.11(c)(1) and (3)(i) requires that a financial institution, after receiving notice that a consumer believes an electronic fund transfer from the consumer's account was not authorized, must investigate promptly and determine whether an error occurred (*i.e.,* whether the transfer was unauthorized), within ten business days (20 business days if the electronic fund transfer occurred within 30 days of the first deposit to the account). Upon completion of the investigation, the financial institution must report the investigation's results to the consumer within three business days. After determining that an error occurred, the financial institution must correct an error within one business day. *See* § 1005.11(c)(1). Under EFTA section 909(b), the burden of proof is on the financial institution to show that an alleged error was in fact an authorized transaction; if the financial institution cannot establish proof of valid authorization, the financial institution must credit the consumer's account.

Existing § 1005.11(c)(2) provides that if the financial institution is unable to complete the investigation within ten business days, its investigation may take up to 45 days if it provisionally credits the amount of the alleged error back to the consumer's account within ten business days of receiving the error notice.[229] Provisional credit is not required if the financial institution requires but does not receive written confirmation within 10 business days of an oral notice by the consumer. *See* § 1005.11(c)(2)(i)(A). If the investigation establishes proof that the transaction was, in fact, authorized, the financial institution may reverse any provisional credit previously extended (assuming there are still available funds in the account). *See* § 1005.11(d)(2).

For government agencies that follow the periodic statement alternative in existing § 1005.15(c), existing § 1005.15(d)(4) provides that an agency shall comply with the requirements of existing § 1005.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information under existing § 1005.15(c) in which the error is first reflected. The Bureau notes that this provision only modifies the 60-day period for consumers to report an error and does not alter any other provision of § 1005.11.

Proposed § 1005.15(e)(4) would modify existing § 1005.15(d)(3) to adjust the timing requirements for reporting errors based on the proposed requirement to provide consumers with electronic account history under proposed § 1005.15(d)(1)(ii), as well as written history upon request. Specifically, proposed § 1005.15(e)(4)(i) would provide that an agency shall comply with the requirements of existing § 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of 60 days after the date the consumer electronically accesses the consumer's account under proposed § 1005.15(d)(1)(ii), provided that the electronic history made available to the consumer reflects the alleged error, or 60 days after the date the agency sends a written history of the consumer's account transactions requested by the consumer under proposed

[228] The required disclosures for this purpose include a summary of the consumer's liability under § 1005.6, or under State law or other applicable law or agreement, for unauthorized electronic fund transfers; the telephone number and address of the person or office to be notified when the consumer believes an unauthorized transfer has been or may be made; and the financial institution's business days. §§ 1005.6(a) and 1005.7(b)(1) through (3).

[229] The financial institution has 90 days (instead of 45) if the claimed unauthorized electronic fund transfer was not initiated in a state, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made. *See* § 1005.11(c)(3)(ii).

§ 1005.15(d)(1)(iii) in which the alleged error is first reflected.

Proposed § 1005.15(e)(4)(ii) would provide that in lieu of following the procedures in proposed § 1005.15(e)(4)(i), an agency complies with the requirements for resolving errors in existing § 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the agency within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

Proposed comment 15(e)–1 would refer to proposed comments 18(d)–1 through –3, discussed below, for guidance on modified limited liability and error resolution requirements.

The Bureau notes that proposed § 1005.15 does not contain an exclusion that corresponds to proposed § 1005.18(e)(3), which would exempt a financial institution from compliance with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account for which it has not completed its collection of consumer identifying information and identity verification, provided the institution has disclosed to the consumers the risks of not registering the prepaid account. The Bureau is not proposing a similar exclusion for government benefit accounts because existing § 1005.15(b) requires that government agencies verify consumers' identities before an access device for an account governed by § 1005.15 is activated.

15(f) Initial Disclosure of Fees and Other Key Information

The Bureau is proposing § 1005.15(f) to provide that for government benefit accounts, a government agency shall comply with the requirements governing initial disclosure of fees and other key information applicable to prepaid accounts as set forth in proposed § 1005.18(f), in accordance with the timing requirements of proposed § 1005.18(h). This proposed requirement is in addition to the pre-acquisition disclosure requirements of proposed § 1005.15(c), discussed above.

As discussed in more detail in the section-by-section analysis of proposed § 1005.18(f) below, the Bureau is proposing to modify the initial disclosure of fees requirement in § 1005.7(b)(5) for prepaid accounts, including government benefit accounts. EFTA section 905(a)(4) requires financial institutions to disclose to consumers, as part of an account's terms and conditions, any charges for electronic fund transfers or for the right to make such transfers. Existing § 1005.7(b)(5) implements this requirement by stating that, as part of the initial disclosures, any fees imposed by a financial institution for electronic fund transfers or for the right to make transfers must be disclosed. Existing comment 7(b)(5)–1 further clarifies that other fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may, but need not, be disclosed. The Bureau believes that for prepaid accounts (including government benefit accounts), however, it is important that the initial account disclosures provided to consumers list all fees that may be imposed in connection with the account, not just those fees related to electronic fund transfers.

Thus, to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to propose an adjustment of the requirement EFTA section 905(a)(4), which is implemented in existing § 1005.7(b)(5), for government benefit accounts. Specifically, the Bureau is proposing § 1005.15(f), which would cross-reference § 1005.18(f) to require that, pursuant to proposed § 1005.18(f)(1), in addition to disclosing any fees imposed by a government agency for electronic fund transfers or the right to make such transfers, the agency must also provide in its initial disclosures given pursuant to § 1005.7(b)(5) all other fees imposed by the agency in connection with a government benefit account. For each fee, an agency must disclose the amount of the fee, the conditions, if any, under which the fee may be imposed, waived, or reduced, and, to the extent known, whether any third party fees may apply. The Bureau believes that most agencies are already disclosing all fees in the terms and conditions accompanying government benefit accounts. These disclosures pursuant to proposed §§ 1005.15(f) and 1005.18(f) must include all of the information required to be disclosed pursuant to § 1005.18(b)(2)(ii)(B) and must be provided in a form substantially similar to Sample Form A–10(e).

The Bureau believes that for consistency purposes and to facilitate consumer understanding of a government benefit account's terms, it is useful for the fee disclosure provided pursuant to § 1005.7(b)(5), as modified by proposed § 1005.18(f), to be in the same format of the long form disclosure requirement of proposed § 1005.18(b)(2)(ii)(A), as applied to government benefit accounts via proposed § 1005.15(c).

15(g) Credit Card Plans Linked to Government Benefit Accounts

The Bureau is proposing § 1005.18(g), which would require that for credit plans linked to government benefit accounts, a government agency must comply with prohibitions and requirements applicable to prepaid accounts as set forth in proposed § 1005.18(g). See the section-by-section analysis of proposed § 1005.18(g) below for additional information on this proposed requirement. The Bureau seeks comment on this portion of its proposal for government benefit accounts.

Section 1005.17 Requirements for Overdraft Services

17(a) Definitions

Section 1005.17 sets forth requirements that financial institutions must follow in order to provide ''overdraft services'' to consumers related to consumers' accounts. Under § 1005.17, financial institutions must provide consumers with notice of their right to opt in, or affirmatively consent, to the institution's overdraft service for ATM and one-time debit card transactions, and obtain the consumer's affirmative consent, before fees or charges may be assessed on the consumer's account for paying such overdrafts.

Section 1005.17(a) currently defines ''overdraft service'' to mean a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. Section 1005.17(a) also provides that the term ''overdraft service'' does not include any payment of overdrafts pursuant to: (1) A line of credit subject to Regulation Z, including transfers from a credit card account, home equity line of credit, or overdraft line of credit; (2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account; or, (3) A line of credit or other transaction exempt from Regulation Z pursuant to § 1026.3(d). In adopting the provisions in what is now § 1005.17, the Board indicated that these methods of covering overdrafts were excluded because they require the express agreement of the consumer.[230]

As discussed in the Overview of Regulation Z Proposal section, the

[230] 74 FR 59033, 59040 (Nov. 17, 2009).

Bureau is declining to extend the current regulatory scheme governing overdraft services on checking accounts to prepaid accounts, and is instead proposing to regulate these types of services generally under Regulation Z (as well as Regulation E's compulsory use provision). The proposal would amend § 1005.17(a)(1) to explain that the term ''overdraft service'' does not include credit plans that are accessed by prepaid cards that are credit cards under Regulation Z. Specifically, the proposal would amend § 1005.17(a)(1) to provide that the term ''overdraft services'' does not include any payments of overdrafts pursuant to a line of credit or credit plan subject to Regulation Z, including transfers from a credit card account, home equity line of credit, overdraft line of credit, or a credit plan that is accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z. Similar to the other exemptions from the definition of ''overdraft service,'' credit card plans require the express agreement of consumers in that, under the proposal, such plans can be added to previously issued prepaid accounts only upon consumer request. See Regulation Z § 1026.12(a)(1) and proposed comment 12(a)(1)–7. In addition, under the proposal, a credit card account may not be added to a previously issued prepaid account until 30 calendar days after the prepaid account has been registered. *See* proposed § 1005.18(g)(1) and Regulation Z § 1026.12(h). The Bureau believes that the provisions in Regulation Z § 1026.12(a)(1) and (h) and § 1005.18(g)(1) would provide sufficient protections to ensure that the addition of a credit card account to a previously issued prepaid account would occur only with the consumer's consent.

The Bureau also notes that the opt-in provision in § 1005.17 would not apply to credit accessed by a prepaid card that is not a credit card because the card only accesses credit that is not subject to any finance charge defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments. This is because § 1005.17(a) applies only to overdraft services where a financial institution assessed a fee or charge for the overdraft. For prepaid accounts under the proposal, any fees or charges for ATM or one-time ''debit card'' transactions (as that term is used in § 1005.17) that access an institution's overdraft service would be considered ''finance charges'' under the proposal.[231] Thus, a prepaid card that is not a credit card could not be charging any fees or charges for ATM or one-time ''debit card'' transactions (as that term is used in Regulation E § 1005.17) for accessing the overdraft service, such that the opt-in provision in Regulation E § 1005.17 would apply. If a prepaid card was charging any fees or charges for ATM or one-time ''debit card'' transactions (as that term is used in Regulation E § 1005.17) that accessed the overdraft service, the prepaid card would be a credit card under Regulation Z. In that case, the prepaid card would not be subject to the opt-in requirement in § 1005.17, but would be subject to provisions of Regulation Z, as discussed above.

Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

Regulation E currently applies to payroll card accounts (as well as government benefit accounts, as discussed above in the section-by-section analysis of § 1005.15). Section 1005.18 contains provisions specific to payroll card accounts. Because payroll card accounts would be largely subsumed into the proposed definition of prepaid account, the Bureau proposes to revise § 1005.18 by replacing it with provisions governing prepaid accounts, which the Bureau proposes to apply to payroll card accounts as well.

The current provisions in § 1005.18, as discussed below, provide an alternative to the periodic statement requirement of § 1005.9(b) for payroll card accounts and make corresponding adjustments to certain other provisions in Regulation E for financial institutions following the periodic statement alternative. In addition to providing a periodic statement alternative (and corresponding adjustments) for prepaid accounts, proposed § 1005.18 also contains other modifications and additions to certain requirements in Regulation E, including with respect to pre-acquisition and other disclosures, limited liability and error resolution, and credit card plans linked to prepaid accounts. The provisions of proposed § 1005.18 are discussed below in turn.

The Bureau notes that while proposed § 1005.18 would set forth specific requirements for prepaid accounts, there are other provisions in Regulation E subparts A and B that would apply to prepaid accounts by virtue of their being deemed accounts in the Regulation. Thus, to the extent a provision in Regulation E applies to an ''account,'' unless otherwise modified by proposed § 1005.18, that provision would apply to a prepaid account. For example, § 1005.8(a) requires provision of a change in terms notice in certain circumstances. As the Bureau is not proposing to modify this requirement for prepaid accounts, it would apply to prepaid accounts in the same manner as it does to all other accounts under Regulation E.

18(a) Coverage

The Bureau is proposing to modify § 1005.18(a) to state that a financial institution shall comply with all applicable requirements of EFTA and Regulation E with respect to prepaid accounts except as modified by proposed § 1005.18. Proposed § 1005.18(a) would also refer to proposed § 1005.15 for rules governing government benefit accounts.

Existing comment 18(a)–1 addresses issuance of access devices under § 1005.5 and explains that a consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. The Bureau is proposing to add a cross-reference to § 1005.5(b) (regarding unsolicited issuance of access devices) in comment 18(a)–1 and to add additional guidance that would explain that a consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail store or acquires a prepaid account by making a request or submitting an application by telephone or online. The Bureau notes that while financial institutions may provide prepaid accounts to consumers on an unsolicited basis, they must comply with the provisions on unsolicited issuance in existing § 1005.5(b) and compulsory use in § 1005.10(e)(2).

The Bureau is also proposing to revise existing comment 18(a)–2 regarding application of Regulation E to employers and services providers to refer to prepaid accounts in addition to payroll card accounts, but otherwise intends to leave comment 18(a)–2 unchanged.

The Bureau seeks comment on this portion of its proposal.

18(b) Disclosure Requirements for Prepaid Accounts

Overview

The Bureau is proposing to adopt new disclosures for prepaid accounts that would be provided before a consumer

[231] Under the proposal, the term ''debit card'' in subpart A of Regulation E generally includes prepaid cards, except for purposes of § 1005.17. *See* proposed comment § 1005.2(b)(3)(i)–8.

acquires a prepaid account. These proposed disclosures, which the Bureau developed during a period of consumer testing and outreach, would be adopted in proposed § 1005.18(b) and would be in addition to the initial disclosure requirements in existing § 1005.7(b).[232] The Bureau believes that providing disclosures before the consumer's acquisition of the prepaid account will ensure that all consumers, regardless of the type of prepaid account they are acquiring, receive the proposed disclosures at a relevant time in the acquisition sequence.

The proposal would require that a financial institution provide to the consumer both a ''short form'' and a ''long form'' disclosure before the consumer acquires a prepaid account. The short form would set forth the prepaid account's most important fees to facilitate basic understanding of the account's key terms and, when feasible, comparison shopping with other prepaid account products. The Bureau believes that this form would quickly allow the consumer to assess key fees and terms of the prepaid account. Meanwhile, the long form disclosure would list all of the fees associated with the prepaid account and would include more detailed information on how those fees are assessed. The long form would give consumers an opportunity to review all fee information about the prepaid account before acquiring an account.

The Bureau is also proposing exceptions to the general disclosure requirement for situations where a consumer acquires a prepaid account in certain retail stores or orally by telephone. In these situations, a financial institution would still always have to provide the short form disclosure to the consumer prior to acquisition, but it would have the option of providing the long form disclosure post-acquisition, as long as the financial institution provides methods for consumers to access the long form electronically and orally prior to acquisition. *See* proposed § 1005.18(b)(1)(i) through (iii).

Disclosure Requirements Generally

EFTA section 905(a) sets forth disclosure requirements for accounts, stating that the terms and conditions of electronic fund transfers involving a consumer's account must be provided at the time the consumer contracts for an electronic fund transfer service, in accordance with the regulations of the Bureau. Section 905(a) further states that the disclosures must include, among other things and to the extent applicable, any charges for electronic fund transfers or for the right to make such transfers (section 905(a)(4)), that a fee may be imposed for use of certain ATMs (section 905(a)(10)), information regarding the type and nature of electronic fund transfers that the consumer can initiate (section 905(a)(3)), and details regarding the consumer's liability for unauthorized transactions and whom to contact in the event an unauthorized transaction has occurred (section 905(a)(1) and (2)).[233]

In prior rulemakings, the Board implemented provisions in Regulation E consistent with these statutory requirements, primarily in existing § 1005.7. Specifically, section 1005.7(a) states that the required disclosures must be provided to a consumer at the time a consumer contracts for an electronic fund transfer or before the first electronic fund transfer is made involving the consumer's account. Section 1005.7(b) also sets forth what a financial institution must include in its initial disclosures, including details regarding the types of transfers that the consumer may make and the limitations on the frequency and dollar amount of the transfers, any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers, and a notice that a fee may be imposed by an ATM operator when the consumer initiates an electronic fund transfer or makes a balance inquiry, among other requirements.

At various points, these general provisions in § 1005.7 were modified for use with other types of accounts or in other contexts. *See generally* § 1005.14(b)(1) (disclosures provided by certain service providers);[234] current § 1005.15(d) (disclosures related to the electronic fund transfer of government benefits);[235] § 1005.16 (disclosures at ATMs);[236] § 1005.17(d) (overdraft disclosures);[237] current § 1005.18(c)(1) (payroll card account disclosures);[238] and § 1005.31 (disclosures related to remittance transfers).[239]

Comments Received and Stakeholder Outreach Regarding Disclosure

In proposing new requirements and a modification of the existing disclosure requirements in § 1005.7(b)(5) for prepaid accounts, the Bureau has considered comments received in response to the Prepaid ANPR, in addition to conducting further outreach. In the Prepaid ANPR, the Bureau noted that one of its goals was to allow consumers to easily compare financial products by ensuring transparent fee disclosure.[240] The Bureau also asked three specific sets of questions related to disclosure: (1) What steps could the Bureau take to most effectively regulate prepaid products to provide the consumer with transparent, useful, and timely fee disclosures?; (2) How can the Bureau best enable a consumer to compare various GPR cards, or other payment products, that may have different fee structures or be offered through various distribution channels? Should market participants be required to provide disclosure pre-sale, post-sale, or both?; and (3) Should the existence, or lack thereof, of FDIC pass-through insurance associated with a GPR card be disclosed to the consumer? If so, how and when should the existence of FDIC pass-through insurance be disclosed?[241]

Comments received in connection with the first two sets of these questions are addressed below, and the comments received in connection with the set of questions regarding FDIC pass-through deposit insurance are addressed below in the section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*13*).

As to the first set of questions, commenters focused primarily on disclosures that would appear on the external packaging material of a GPR card sold in a retail store. Many industry and consumer advocacy group commenters suggested that the Bureau develop specific disclosures, such as a uniform chart or fee box, that a financial institution would affix to a GPR card's packaging when the card is offered for sale in a retail store, instead of a more general rule that stated only that fees be disclosed clearly and conspicuously without providing specific instructions or model forms. Many of these industry commenters suggested that adopting a standardized form would be less confusing than complying with a clear and conspicuous standard. Apart from suggesting a standardized form, industry

[232] The Bureau is also proposing, for purposes of prepaid accounts, to expand the requirement in existing § 1005.7(b)(5) to disclose fees related to EFTs to require the disclosure of all fees related to the prepaid account, as discussed below in the section-by-section analysis of proposed § 1005.18(f).

[233] In addition, the Truth in Savings Act (TISA) (12 U.S.C. 44, *et seq.*) contains disclosure requirements for accounts issued by depository institutions. Specifically, Regulation DD (10 CFR part 1030), which implements TISA, requires disclosure of the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed. 12 CFR 1030.4(b)(4).

[234] 61 FR 19662, 19674 (May 2, 1996).

[235] 61 FR 19662, 19670 (May 2, 1996).

[236] 78 FR 18221, 18224 (Mar. 26, 2013).

[237] 74 FR 59033, 59053 (Nov. 17, 2009).

[238] 71 FR 51437, 51449 (Aug. 30, 2006).

[239] 77 FR 50244, 50285 (Aug. 20, 2012).

[240] 77 FR 30923, 30925 (May 24, 2012).

[241] *Id.*

commenters mostly agreed that on-package disclosures should include only the fees that a consumer would most commonly incur while using a prepaid account, in order to increase the likelihood that consumers would understand and use the disclosures.

Many consumer advocacy group commenters, on the other hand, encouraged the Bureau to require full disclosure to the consumer of all fees associated with a GPR card before the consumer acquires an account, rather than only a subset of certain fees. These groups were concerned that consumers would not have a full understanding of a prepaid account's true costs without this information and that providers could subvert the disclosure's purpose by adjusting fee schedules to increase or add fees not required to be disclosed on a shorter disclosure.

Separately, some consumer advocacy group commenters suggested that the Bureau propose an ''all-in'' cost disclosure. These commenters explained that an ''all-in'' disclosure would present a single number to the consumer that would estimate the approximate cost of a prepaid account product. These consumer advocacy group commenters also asserted that such a disclosure could estimate, for example, the average monthly cost of using the prepaid account product based on one or several different use cases. Some of the consumer advocacy group commenters also suggested that the Bureau could collect actual usage data from issuers of prepaid accounts and use that data to develop an algorithm or other equation to serve as the basis for this type of all-in disclosure.[242]

As to the second set of questions regarding how to facilitate consumer comparison shopping and whether pre- or post-sale disclosures are necessary, many industry and consumer advocacy group commenters agreed that it was important for consumers to receive disclosures before they buy a prepaid account. Industry commenters further discouraged the Bureau from implementing any disclosure regulations that would mandate a specific method of delivery for disclosures provided after the consumer acquires a prepaid account, which they viewed as potentially imposing a large burden on industry without significantly benefiting the consumer. Industry and consumer advocacy group commenters also encouraged the Bureau to develop disclosures to accommodate the variety of distribution channels through which prepaid products are distributed and sold, while also considering how distribution may evolve in the future. Several consumer advocacy group commenters emphasized the need for the Bureau to ensure disclosures provided online through a Web site are easy to locate, while also considering that many consumers lack internet access and would have difficulty viewing disclosures online. Some commenters also suggested that providers implement mechanisms to ensure consumers purchasing prepaid accounts online have actually reviewed the disclosures.

In addition to reviewing comments received in response to the Prepaid ANPR, the Bureau has also engaged in additional outreach with interested stakeholders and conducted consumer focus groups and one-on-one testing of prototype disclosures. As discussed in greater detail above and in the report published with this proposal, the Bureau engaged a contractor, ICF, to hold four focus group sessions to gain a general understanding of how and why consumers use prepaid accounts. The Bureau also worked with ICF to conduct one-on-one interviews with consumers to test various model form prototypes the Bureau developed, including variations of the model short form and sample long form disclosures proposed herein.

Based on its review of the comments received in response to the Prepaid ANPR, outreach with stakeholders, insights gathered from consumer testing, and its general market analysis, the Bureau is proposing a new pre-acquisition disclosure regime that it believes will standardize industry disclosures, increase consumers' understanding of prepaid accounts' terms, and improve consumers' ability to compare prepaid account products prior to acquiring a prepaid account. The Bureau is also proposing model forms and sample forms.

Proposed Disclosure Regime

As noted above, EFTA section 905(a) sets forth disclosure requirements for accounts subject to the Act.[243] Proposed section 1005.18(b) would implement EFTA section 905(a) for prepaid accounts. In addition, the Bureau is proposing to use its authority under EFTA sections 904(a) and (c), 905(a), and section 1032(a) of the Dodd-Frank Act to require financial institutions to provide disclosures prior to the time a consumer acquires a prepaid account and for disclosures to include all fees that may be charged for the prepaid account. The Bureau is also proposing, in certain circumstances that financial institutions provide disclosures in languages other than English. As discussed in the section-by-section analysis of proposed § 1005.18(b)(1)(i), proposed § 1005.18(b)(2)(ii)(A), and proposed § 1005.18(b)(6), the Bureau believes that adjustment of the timing and fee requirement and the disclosure language is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities and responsibilities of prepaid account users, because the proposed revision will assist consumers' understanding of the terms and conditions of their prepaid accounts. In addition, the Bureau believes that pre-acquisition disclosures of all fees for prepaid accounts as well as certain foreign language disclosures will, consistent with Dodd-Frank section 1032(a), ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account.

The Bureau believes that there are many ways a consumer could obtain a prepaid account and that the proposed disclosure regime should be adaptable to this variety. For example, a consumer might purchase a prepaid account in a retail store, online through a provider's Web site, or by calling a provider by telephone. A consumer could also receive a prepaid account from an employer in the form of a payroll card account or a student might receive a prepaid account from their university in connection with the disbursement of financial aid. The Bureau believes that framing the disclosure regime as one that would apply before the consumer's acquisition of the prepaid account will ensure that any consumer who obtains a prepaid account, regardless of the type of prepaid account or its method of acquisition, will receive the proposed disclosures.

The proposed pre-acquisition disclosure regime would have two parts. First, the Bureau is proposing that a consumer would receive a ''short form'' disclosure before acquiring a prepaid account. The short form, as demonstrated in proposed Model Forms A–10(a) through (d) and as discussed below in the section-by-section analysis of proposed § 1005.18(b)(3)(iii)(A), would consist of a ''static'' portion that would set forth fees that must be

[242] The ''all-in'' disclosure concept is discussed in more detail in the section-by-section analysis of proposed § 1005.18(b).

[243] The relevant portion of EFTA section 905 states that ''[t]he terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau . . .''

disclosed for all prepaid account products, even if such fees are $0 or if they relate to features not offered for a particular prepaid account product.[244] This static portion would have a ''top-line'' component highlighting four types of fees (the periodic fee, per-purchase fees, ATM withdrawal fees, and the cash reload fee) at the top of the form. The Bureau believes these fee types are the most important to consumers when shopping for a prepaid account.[245] The top-line fees would be displayed in a more prominent and larger font size than the remainder of the disclosures on the form to draw consumers' attention to those fees quickly. Three additional fee types (ATM balance inquiry fees, a customer service fee, and an inactivity fee) and a statement regarding the availability of overdraft services and other credit features would also be required to appear in the static portion of the short form. Additionally, the short form would include an ''incidence-based'' portion that would list up to three additional fees that consumers most commonly incur for a particular prepaid account product. Short forms for payroll card accounts and government benefit accounts would also include a notice at the top of the form regarding compulsory use that consumers are not required to accept such cards as the only method of receiving funds).[246] *See* § 1005.10(e)(2)

The second part of the Bureau's proposed pre-acquisition disclosure regime would require that, before acquiring a prepaid account, consumers would always receive a stand-alone ''long form'' disclosure that would set forth all of a prepaid account product's fees and their qualifying conditions, except for accounts that consumers acquire in retail stores or orally by telephone. For prepaid accounts consumers acquire in retail stores, financial institutions could disclose a URL and telephone number on the short form that a consumer would use to access the content of the long form disclosure prior to acquisition, but they would not have to provide a stand-alone long form disclosure prior to the consumer's acquisition of the prepaid account. For prepaid accounts acquired orally by telephone, financial institutions could inform a consumer that they can access the long form by telephone or online, but would not have to provide the long form disclosure before acquisition unless a consumer requests it.[247]

This proposal would mean that consumers would receive or have access to the short form and long form disclosures in all prepaid account acquisition scenarios. Thus, consumers acquiring prepaid accounts in the form of a payroll card account, a government benefit account, at a bank branch, at a retail store, or on a Web site, for example, would always have the opportunity to review the short form and long form disclosures before acquiring a prepaid account. The Bureau believes it is important for consumers to have access to both of these disclosures in all acquisition scenarios because they serve different but complementary goals. First, the Bureau believes that by prominently displaying important fees with limited explanatory text, the short form will increase the likelihood consumers notice the disclosure of these key fees and are able to use the disclosure to inform their acquisition choice. The short form would present the key fees of a prepaid account in a simplified format rather than requiring a consumer to navigate an exhaustive list of fees and their qualifications for each product in order to identify those that are most relevant. The Bureau also believes that the short form's design, and in particular the emphasized top-line portion of the disclosure, will prominently present key fees, and create a visual hierarchy of information that will more effectively draw consumer's attention to a prepaid account product's key terms. The Bureau also believes this visual hierarchy on the short form will increase the likelihood that consumers will engage with the disclosure. Research has shown that such engagement, or the formation of the intent to use the disclosure, is an important first step to ensure that consumers utilize and understand any disclosure.[248] The Bureau believes that, in many cases, consumers spend little time reviewing fee disclosures when shopping for prepaid accounts, and it is therefore important that any disclosure quickly draw consumers' attention to the most important information regarding that particular account with minimal clutter on the form.

The Bureau also believes that by standardizing most components of the short form, consumers will receive consistent, key fee information about prepaid account products regardless of how or where they shop for or obtain prepaid accounts. For example, under this proposal, a consumer who takes a package containing a prepaid account access device off of a J-hook in a retail store would see a short form listing the same types of fees in the static portion of the short form included on the exterior of the packaging material as the fee types included in the static portion of the short form for an entirely different prepaid account product a consumer would see when shopping online. Similarly, consumers receiving payroll card accounts at their place of employment would receive a short form disclosure containing the same fees in the static portion of the short form before agreeing to receive wages via the payroll card account. The Bureau believes that standardizing pre-acquisition disclosures across all possible acquisition channels will make it easier for consumers to compare different types of prepaid account products.

As discussed below in the section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*8*), however, the Bureau is also proposing to include an incidence-based portion on the short form disclosure to highlight the most commonly charged fees that are not otherwise captured in the form. In part, the Bureau has proposed to include this incidence-based portion on the short form to address concerns that providers could simply change their fee structures to make their products appear less expensive relative to other products. The Bureau acknowledges that this portion of the short form would not be standardized across different prepaid account products due to the different fees financial institutions would be required to disclose on the incidence-based portion of the short form. [249] The Bureau believes, however, that having identical fee types listed in the static portion of the short form will be

[244] The Bureau refers to a ''prepaid account product'' to mean a product that offers prepaid accounts with identical fee schedules to any consumer who opens an account.

[245] *See* section-by-section analysis of proposed § 1005.18(b)(2)(i) for a complete discussion of the short form's contents.

[246] *See* section-by-section analysis of proposed § 1005.18(b)(2)(i)(A) for a discussion of the notice requirement on the short form for payroll card accounts. *See* section-by-section analysis of proposed § 1005.15(c)(2) for a discussion of the notice requirement on the short form for government benefit accounts.

[247] In all acquisition scenarios, however, the financial institution would have to provide a version of the long form in the terms and conditions included inside a package in a retail setting or provided to the consumer through other methods, such as in the mail after acquisition. *See* comment to proposed § 1005.18(f).

[248] *See, e.g.,* Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law,* 66 Stan. L. Rev. 545 (2014).

[249] The Bureau also notes that the proposed updating requirements for the proposed incidence-based fee disclosure could result in these fees being different for the same prepaid account product due to differing proposed requirements for timing of revisions to in-store versus online forms. *See* the section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*8*)(I).

sufficiently consistent so as to facilitate consumer comparison shopping, even if the incidence-based portion of the form introduces some variance. At the same time, the incidence-based portion of the short form disclosure will ensure that consumers are made aware of any other significant fees relating to a particular prepaid account product.

The Bureau also recognizes that providing only a subset of fee information about a prepaid account on the short form might not give all consumers the information they need to make their acquisition decisions. Thus, the Bureau is proposing also to require provision pre-acquisition of the long form disclosure, which would set forth all of a prepaid account's fees to a consumer and the conditions under which those fees could be imposed. The Bureau expects that consumers seeking to learn about more fees than those listed on the short form will utilize the long form. The proposed long form also would provide detailed explanations to consumers about conditions that may cause fees to vary, such as the impact of crossing a threshold number of transactions or receiving direct deposits into the prepaid account. Such explanations would not be permitted on the short form in order to preserve its simplicity, but may be relevant to some consumers' acquisition decisions. *See* proposed § 1005.18(b)(2)(i)(C).[250]

The Bureau does not believe consumers would necessarily benefit from receiving only this long form disclosure before acquiring a prepaid account. In the Bureau's testing, for example, many participants reported feeling overwhelmed by the amount of information included on a prototype long form and they struggled to compare two long form disclosures, even those that listed identical fee types. The Bureau believes that the potential size and complexity of the long form might overwhelm and lead consumers to disregard the disclosure and also not use it to comparison shop across products or even to evaluate a single product. As discussed above, the short form, on the other hand, will be in a simpler format and its static portion, the Bureau believes, will facilitate comprehension and comparison shopping. Insofar as the Bureau does recognize that the subset of fee information on the short form may be incomplete for some consumers, the Bureau believes that providing both the short form and long form disclosures would strike the right balance between giving consumers key information about a prepaid account to aid understanding and comparison shopping, while also providing them with the opportunity to review all of a prepaid account's fee information pre-acquisition.

The Bureau also recognizes that in certain acquisition scenarios, it is less likely that a consumer would engage in comparison shopping. For example, when the consumer receives disclosures for a payroll card account, it may be more difficult for that consumer to comparison shop. Even in this situation, though, the Bureau believes that consumers would benefit from receiving the short form and long form disclosures prior to acquiring the payroll card account because the disclosures will facilitate the consumer's understanding of the account's terms and may allow for subsequent comparisons to be made.

The Bureau understands that many prepaid account providers currently provide disclosures that include many (if not all) of their prepaid account's fees, and therefore the Bureau does not believe that this aspect of the proposal introduces a significant new burden, as discussed in greater detail below in the Section 1022 Analysis. As discussed below, however, the Bureau does recognize that there are different forms of disclosures that could apply to prepaid account pre-acquisition disclosures and that burden may vary.

Alternative Approaches Considered by the Bureau

The Bureau has considered a variety of approaches to pre-acquisition disclosures, including those suggested by commenters to the Prepaid ANPR and others who have opined to the Bureau and in other publications about prepaid account disclosures.

''All-in'' disclosure. Among the alternatives the Bureau has considered is disclosure of a single monthly cost for using a prepaid account. Proponents commented that such a disclosure is appealing because it would provide a quick and understandable reference point and, as compared to a disclosure listing several different numbers with line items for each fee type, could also allow for easier comparisons among prepaid account products. Proponents have suggested that this figure could be conceptually similar to the ''Energy Star'' cost disclosure regime the FTC has implemented for appliances,[251] and would present the average amount paid by users of that particular prepaid account product over a designated time period (such as monthly) or the output of a formula intended to replicate typical consumers' use of prepaid accounts.

While the Bureau believes that this ''all-in'' disclosure could potentially have several benefits, it declines to propose such an approach at this time for several reasons. First, the Bureau is concerned that it may not be possible to develop a single formula to reflect accurately how most consumers typically use a prepaid account. A single formula might include several fee types, such as ATM withdrawal fees, any periodic maintenance fees, and cash reload fees, and weight them based on how often a consumer might incur those fees during a month to determine the approximate cost to all consumers of that prepaid account product. The Bureau's testing, along with other studies, has identified, however, that there is no single, typical use case for all prepaid accounts.[252] Thus, it would be difficult to determine which fee types should be included in such a formula and how often such fees might be incurred.

Second and relatedly, a prepaid account that might have a higher cost under a formula adopted by the Bureau may actually be less costly for certain consumers, depending on how they use the card. For example, a formula might factor in several ATM withdrawal fees each month, but for consumers not using the prepaid account for ATM withdrawals, the disclosure of that single number could be confusing or misleading, and potentially cause a consumer to acquire a prepaid account with a lower all-in cost according to the prescribed formula, but that will cost the particular consumer more. Although multiple usage formulas might rectify this to some degree, the Bureau believes that disclosing more than one such number on a single form could compound consumer confusion.

The Bureau also is concerned that an all-in number that presents the average amount paid by users of that particular prepaid account product over a designated time period would also be

[250] As discussed in greater detail below, the Bureau is proposing § 1005.18(b)(1)(ii) and (b)(iii) to require that for prepaid accounts consumers acquire in retail stores or orally by telephone, long form disclosures would only need to be made accessible, but not necessarily provided, pre-acquisition (although they must be provided after acquisition with the terms and conditions as part of the initial disclosures).

[251] The FTC's Energy Labeling Rule shows consumers how much it might cost to run an appliance each year based on how much energy it uses, and makes it easier for shoppers to compare the energy use among similar models. *See* Fed. Trade Comm'n, *EnergyGuide Labeling: FAQs for Appliance Manufacturers* (May 2013), *available at http://www.business.ftc.gov/documents/bus-82-energyguide-labels-faqs.*

[252] *See, e.g.,* 2014 Pew Study, at 13.

confusing because consumers would likely struggle to interpret how such a summary statistic would apply to their own prepaid account usage.[253] In addition, historical data does not exist for new products and may be inaccurate for products that have changed fees or features. For these reasons, the Bureau has concluded, at this time, that an all-in disclosure would be of limited utility, and could perhaps even be misleading to consumers, but the Bureau might reconsider the utility of this approach in the future.

Category headings. The Bureau also considered a short form disclosure that would include category headings based on the function for which a consumer would utilize the service associated with each fee, a format that many prepaid account providers have already adopted, in lieu of the top-line fee format on the short form that the Bureau is proposing.[254] The Bureau declines to propose this ''categories'' approach for several reasons. First, the Bureau believes that category headers take up needed space on the form that may limit disclosure of other, more important information about the prepaid accounts, particularly given that some categories might include only one fee.[255] Second, the Bureau believes it would be difficult on the same short form to include both its proposed top-line concept and to divide fees into categories. Though space constraints are only an issue for accounts sold in retail stores (due to packaging material size constraints), the Bureau is proposing that a short form with the same format and content would be disclosed in all acquisition scenarios, and thus, it is important that the short form's design can be implemented in all of these scenarios. Finally, during consumer testing, the Bureau did not find that participants' comprehension of fees and their purpose improved when a form included categories; indeed, most participants understood most fees without such a label. Although the Bureau is not proposing to include category headings in the proposed short form, it is proposing that the long form disclosure—which would have more space and detail—would include such headings to facilitate navigation of the larger amount of information that the Bureau anticipates will be included on that form. *See* proposed § 1005.18(b)(4)(i)(B).

The Bureau seeks comment on all of these alternatives and its proposed approach. In particular, the Bureau seeks comment on the utility of including category headings as part of the short form, in lieu of the top-line, and on incorporating an ''all-in'' summary fee concept into prepaid account disclosures. The Bureau also seeks comment on whether it should consider other disclosure alternatives and why such alternatives would be more appropriate than the Bureau's proposed pre-acquisition disclosure regime. Finally, the Bureau seeks comment on whether any pre-acquisition disclosure regime that requires consumers to receive forms disclosing fee information before acquiring a prepaid account is necessary.

To implement its proposed pre-acquisition disclosure regime, the Bureau is proposing timing, content, form and other requirements for prepaid account disclosures. The following discussion sets forth these proposed requirements in detail.

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

As discussed above, § 1005.7(b) of Regulation E currently requires financial institutions to provide certain initial disclosures when a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account. The Bureau is proposing in revised § 1005.18(b)(1)(i) that, in addition to these initial disclosures that are usually provided in an account's terms and conditions document, a financial institution must also provide a consumer with certain fee-related disclosures before a consumer acquires a prepaid account. Specifically, the Bureau is proposing that except when a consumer acquires a prepaid account in a retail store or orally by telephone, as described in proposed § 1005.18(b)(1)(ii) or (iii), a financial institution must provide a short form and a long form disclosure required by proposed § 1005.18(b)(2)(i) and (ii) before a consumer acquires a prepaid account. The Bureau believes consumers in all acquisition scenarios would benefit from receiving these additional, pre-acquisition disclosures prior to contracting for an electronic fund transfer service or before the first electronic fund transfer is made involving the account, at which point they would receive the initial disclosures that Regulation E already requires.

The Bureau believes disclosures that provide fee information *prior* to a consumer's acquisition of a prepaid account (rather than at the time of contracting for an electronic fund transfer service, which may be later) are necessary and beneficial to consumers for several reasons. First, the Bureau believes a consumer should receive clear disclosures about prepaid accounts before acquiring them. Based on its outreach, the Bureau understands that some financial institutions may already provide limited disclosures to consumers prior to acquisition, and that some financial institutions may not disclose the fees that consumers may find relevant to their acquisition decision until the account is purchased (or otherwise acquired), the packaging material is opened, and a consumer reviews the enclosed terms and conditions document. For example, one prepaid product currently sold in retail stores imposes an inactivity fee after ninety days of no transactions, but this fee is not disclosed on an outward-facing external surface of the prepaid account access device's packaging material that is visible before purchase. Further, the Bureau believes that some employees acquiring payroll card accounts may receive information about the accounts in a manner that makes it difficult for an employee to comprehend the accounts' key fees. For example, employees might receive terms and conditions documents regarding payroll card accounts at the same time they receive other benefits-related paperwork, making the fees difficult for employees to comprehend while sorting through other important and time-sensitive paperwork. Similarly, certain providers of prepaid accounts online may present disclosures on their Web sites in a way that makes it difficult for consumers to have the chance to review them prior to acquisition.

Additionally, the Bureau believes that pre-acquisition disclosures can also decrease the ability of financial institutions to obscure key fees. Many participants in the Bureau's consumer testing reported incurring fees that they did not become aware of until after they purchased their prepaid account. Several participants also admitted to having difficulty understanding the disclosures they received with their current prepaid accounts and were very unsure as to whether key fees had been

[253] For example, when testing a concept that presented a fee amount next to a graphic representing the range of the maximum and minimum fees that other providers might charge for the same service, the Bureau found that the vast majority of testing participants did not understand this graphic or how it might apply to their own prepaid card usage.

[254] *See* ICF Report, at App. C, 2A. As listed in the prototype, an ''Add and withdraw money'' category, for example, would list the various ways the consumer could withdraw money from a prepaid account, such as through a withdrawal from an automated teller machine.

[255] For example, a ''Maintenance'' category might include only one periodic fee, such as a monthly fee.

disclosed before they acquired the accounts.

Second, as some commenters to the Prepaid ANPR emphasized, in order to comparison shop among products, it is helpful for consumers to be able to review disclosures setting forth key terms in like ways before choosing a product. As noted earlier, the Bureau recognizes that consumers offered prepaid products by third parties like employers or educational institutions may be unable to easily comparison shop. For example, at the time students are offered a student card from their university, such as when registering for school, they might be unable to compare that card with other products. The Bureau believes, however, that even in this scenario, students will benefit from receiving the short form and the long form disclosure so that they can better understand the product's terms before deciding to accept it. Additionally, the Bureau believes that both of these disclosures may inform the way in which these consumers decide to use the product once they have acquired it and enable them to, at a convenient time, compare it with any other products.

Third, the Bureau believes that consumers could potentially use their prepaid account for an extended period of time and perhaps incur substantial fees over that time. For example, during the Bureau's consumer testing, participants indicated that they tend to use a given prepaid account product, even one they do not like, at least until they spend the entirety of the initial load amount, which could be as much as $500. Others reported reloading the account, using it for as long as one or two years after purchase, and often arranging to receive direct deposit of wages or benefits into the account. Thus, the Bureau believes that whatever disclosure information a consumer uses when selecting a prepaid account could have a significant, and potentially long-term, impact, especially if a consumer chooses to receive direct deposit into a prepaid account. Current research supports this belief. Specifically, one study indicates that prepaid accounts receiving direct deposit of government benefits might have life spans of as long as three years, and consumers who receive non-government direct deposit on their accounts use them on average for longer than one year.[256] Though other, older research estimates the average life span of some prepaid accounts may be on average less than six months, the Bureau believes that even this period of time is significant if consumers load most or all of their funds into their prepaid accounts.[257]

Regulation E, however, currently only provides for initial disclosures to be delivered at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account. The Bureau believes that, in the prepaid account context, this might sometimes be too late. With prepaid accounts, consumers often contract for an electronic fund transfer when acquiring the prepaid account and completing an initial load. The Bureau therefore is concerned that consumers may receive the fee-related, initial disclosures required by § 1005.7(b) (which proposed § 1005.18(f) would modify for prepaid accounts) that are typically provided within the prepaid account's terms and conditions document too late to utilize them to decide on the right prepaid account product for their needs and to comparison shop among various prepaid account products.

The Bureau is therefore proposing § 1005.18(b)(1)(i), which would require a financial institution, in most cases, to provide the short and long form disclosures described in proposed § 1005.18(b)(2)(i) and (ii) before a consumer acquires a prepaid account. As noted above, this aspect of the proposal is authorized under EFTA sections 904(a) and (c), 905(a), and Dodd-Frank sections 1032(a). The Bureau seeks comments on all aspects of its proposal to mandate pre-acquisition disclosures. In particular, the Bureau solicits feedback on whether pre-acquisition disclosures are necessary or if the fee information provided pursuant to existing § 1005.7(b) (as modified by proposed § 1005.18(f)) at the time a consumer contracts for the prepaid account is sufficient to inform consumers about the account's terms and conditions.

The Bureau is also proposing to add comment 18(b)(1)(i)–1, which would provide examples of what would and would not qualify as having provided disclosures pre-acquisition. The first example would clarify how pre-acquisition disclosures work in a bank branch context. Specifically, proposed comment 18(b)(1)(i)–1.i would explain that when a consumer inquires about obtaining a prepaid account at a branch location of a bank, then receives the printed short form and long form disclosures related to the prepaid account product, and after receiving the disclosures, agrees to open a prepaid account with the bank, a consumer would have received the short form and long form disclosures pre-acquisition. Another proposed example would address payroll card accounts. Specifically, proposed comment 18(b)(1)(i)–1.ii would explain that if a consumer learns that he or she can receive wages via a payroll card account, at which time a consumer receives the short form and long form disclosure to review, and a consumer agrees to receive wages via a payroll card account, a consumer would have received the short form and long form disclosures pre-acquisition. Proposed comment 18(b)(1)(i)–1.ii would further clarify that if a consumer receives the payroll card or other device at the end of the first pay period, at which time a consumer also receives the short form and long form disclosure to review for the first time, these disclosures were provided to a consumer post-acquisition, and thus not provided in compliance with proposed § 1005.18(b)(1)(i).

Proposed comment 18(b)(1)(i)–2 would provide further explanation regarding circumstances when short form and long form disclosures would be considered to have been delivered after a consumer acquires a prepaid account, and thus in violation of the timing requirement in proposed § 1005.18(b)(1)(i). Specifically, proposed comment 18(b)(1)(i)–2 would explain that when the short form and long form disclosures required under proposed § 1005.18(b)(2)(i) and (ii) are presented after a consumer has initiated a purchase for a prepaid account on a financial institution's Web site, but before a consumer provides any personal identifying information and agrees to accept the prepaid account, such disclosures would be made pre-acquisition in accordance with proposed § 1005.18(b)(1)(i). Proposed comment 18(b)(1)(i)–2 would also explain that the short form and long form disclosures that are provided electronically when a consumer acquires a prepaid account on a financial institution's Web site are considered to be given after a consumer acquires a prepaid account if a consumer can easily bypass the disclosures before acquiring a prepaid account. Proposed comment 18(b)(1)(i)–

[256] Fumiko Hayashi & Emily Cuddy, Fed. Reserve Bank of Kansas City, *General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees and Fraud Risks* at 33–35 (Working Paper No. RWP 14–01, 2014), *available at https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14-01.pdf.enter/publications/discussion-papers/2012/D-2012-August-Prepaid.pdf.*

[257] A 2012 study by the Federal Reserve Bank of Philadelphia indicates that the average life span of GPR cards tends to be between 3 and 6 months. *See* 2012 FRB Philadelphia Study, at 18.

2 would also clarify that a financial institution can present the short form and long form disclosures on the same Web page to fulfill the requirements of proposed § 1005.18(b)(1)(i), and that a financial institution could also present the short form disclosure on a Web page and include a hyperlink directly to the long form disclosure on that same Web page, but, if it does so, a consumer must not have to review any unrelated pages before viewing the long form disclosure. The Bureau nevertheless seeks comment on whether additional guidance is necessary regarding how electronic disclosures can be provided in compliance with the pre-acquisition timing requirement in proposed § 1005.18(b)(1)(i).

Some consumer advocacy groups that responded to the Prepaid ANPR suggested that the Bureau also require that financial institutions confirm that consumers have read disclosures provided online. The Bureau believes that such a requirement is infeasible. Nevertheless, the Bureau seeks comment on whether technology exists that could be implemented by all potentially covered entities and that would permit them to confirm a consumer has read online disclosures, or if providing guidance that a consumer should not be able to easily bypass the pre-acquisition disclosures would ensure that consumers have sufficient opportunity to review disclosures provided electronically.

18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Stores

The Bureau is proposing an adjustment to its proposed general pre-acquisition timing requirement where consumers acquire prepaid accounts in retail stores. Proposed § 1005.18(b)(1)(ii) would provide that financial institutions would have to provide a written version of the short form disclosure before a consumer acquires a prepaid account in person in a retail store. But it would permit financial institutions to delay providing the long form disclosure until after the consumer acquires a prepaid account as long as certain conditions are met. Those conditions are described in proposed § 1005.18(b)(1)(ii)(A) through (C).

The Bureau believes that in many cases it is not feasible for financial institutions that offer prepaid accounts in retail stores to provide printed long form disclosures prior to acquisition. For example, retail stores may require financial institutions to use packaging material with specific dimensions that accommodate standard J-hook display racks. The Bureau understands that the dimensions of a typical J-hook display used today for prepaid accounts may limit a prepaid account access device's packaging material to no larger than 4 inches by 5.25 inches. In addition, the length of the hooks on which a prepaid account's packaging material is displayed is finite and can accommodate only a limited number of packages depending on each package's thickness.

Due to these apparent size and space limitations, the Bureau believes that many financial institutions would not be able to present both the short and long form disclosures required by § 1005.18(b)(2)(i) and (ii) on the packaging before a consumer acquires a prepaid account in a retail store, without overhauling the packaging's design or otherwise adjusting the relevant retail space. For example, more disclosures could require longer, wider or thicker packaging material than that currently used. The Bureau believes that such packaging adjustments would impose a significant burden and likely decrease the number of prepaid account products that could be sold at one time in retail stores. In turn, this could increase the cost of prepaid account products and limit comparison shopping (if the retail store maintains the same overall space for the display and sale of all prepaid account products).

Nevertheless, the Bureau believes it is important that consumers be provided an opportunity to review both the short form and long form disclosures before acquisition. Thus, proposed § 1005.18(b)(1)(ii) would require that in retail stores, a financial institution could provide the long form disclosure after a consumer acquires a prepaid account in person in a retail store, as long as the three conditions discussed below are met. The Bureau believes these conditions will ensure a consumer receives a written, short form disclosure that includes methods for accessing the long form disclosure by telephone or via a Web site.

Proposed § 1005.18(b)(1)(ii)(A) would set forth the first condition: that the access device for the prepaid account available for sale in a retail store must be inside of a packaging material. This condition would apply even if the product, when sold, is only a temporary access device. As noted above, J-hooks place limitations on the size and volume of packaging material that can be used to market prepaid accounts. If a financial institution does not use such packaging material because, for example, a customer service representative is responsible for distributing prepaid accounts to consumers, then the Bureau does not believe that space constraints would prevent a financial institution from providing both the short and long form disclosure pre-acquisition. The Bureau considered requiring that in order to qualify for the retail store exemption, the packaging material should also be directly accessible to a consumer. Under such a requirement, a financial institution would not qualify for the retail store exemption if the prepaid account access devices were inside of packaging material, but such packaging material was stored behind glass or a counter, and a consumer would have to request to see a package from a customer service representative in order to review the disclosures. The Bureau decided against proposing this requirement. The Bureau believes that retailers that do not make packaging material directly accessible to consumers may have justifiable reasons for doing so, such as security concerns, yet still face space constraints that make pre-acquisition delivery of both proposed forms difficult. Nevertheless the Bureau seeks comment on whether retailers that use packaging material, but do not make it directly accessible to consumers, actually do face space constraints that justify allowing them to disclose the long form post-acquisition.

Proposed § 1005.18(b)(1)(ii)(B) would set forth the second condition: the short form disclosures required by proposed § 1005.18(b)(2)(i) must be provided on or be visible through an outward-facing, external surface of a prepaid account access device's packaging material in the tabular format described in proposed § 1005.18(b)(3)(iii). The Bureau recognizes that fulfilling this condition could mean that some financial institutions that offer prepaid accounts in retail stores and want to comply with proposed § 1005.18(b)(1)(ii) may have to change their packaging. The Bureau, however, believes that the majority of current prepaid account products' packaging material would allow financial institutions to include the short form content requirements on an external surface that is visible to a consumer pre-acquisition without altering the structure of the existing packaging.

The third condition, set forth in proposed § 1005.18(b)(1)(ii)(C), would require that a financial institution include a telephone number and URL on the short form disclosure, as required by proposed § 1005.18(b)(2)(i)(B)(*11*), that a consumer can use to access the long form disclosure while in a retail store. The Bureau believes that even if it is not feasible for a consumer to receive both the short and long form disclosures pre-acquisition in some

retail settings, the consumer should at least be able to access the long form disclosure by telephone or via a Web site, should they want to obtain comprehensive fee information. The Bureau understands that many consumers use mobile devices that can access the internet, and the Bureau notes that all of the participants in the Bureau's consumer testing reported having a smartphone with internet access. Indeed, recent polls indicate that as many as 65 percent of adults in the United States own a smartphone.[258] The Bureau therefore believes that many consumers at least have the ability to access a Web site through the URL that would be listed on the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) when shopping for a prepaid account. Several testing participants also mentioned, however, that even though they have a smartphone, they were concerned whether all consumers would be able to access a Web site when in a retail store or whether they would always have sufficient reception to access a Web site from their smartphone while indoors. The Bureau is therefore also proposing that when a financial institution is not disclosing the long form before a consumer acquires a prepaid account, the financial institution must also make the long form available to a consumer by telephone, a method that even consumers with mobile devices that are not smartphones could use to access the long form disclosure's contents.

The Bureau recognizes that proposed § 1005.18(b)(ii)(C) assumes that a consumer would have a mobile device capable of either accessing the internet or making calls when shopping in a retail store. But it believes that providing these two methods will increase the likelihood that most consumers would be able to access the long form disclosure in a retail store. The Bureau also acknowledges that it might be complicated for financial institutions to provide the long form disclosure by telephone, whether using an interactive voice response system or through a customer service agent. Further, as discussed in the section-by-section analysis of proposed § 1005.18(b)(1)(iii), it may be harder for a consumer to understand the information in the long form when delivered orally. Nevertheless, the Bureau believes that if a consumer takes the affirmative step to request additional information about a prepaid account by telephone when shopping in a retail store, it could be more likely that the consumer is seeking out specific information that is not included on the short form, and will therefore be less likely to suffer from information overload.

The Bureau further recognizes that permitting financial institutions to only provide a short form disclosure to a consumer pre-acquisition in retail stores means that consumers may not see full fee information before acquiring a prepaid account. It could be due to the technical reasons described above or due to the fact that consumers lack the time or motivation to seek it out. Indeed, in the Bureau's consumer testing, some participants had difficulty noticing and understanding language that listed the methods for accessing the long form disclosure on the short form. Some participants also reported that they would be unlikely to use their mobile device to seek out such information when shopping because, in the past, they spent limited time shopping for a prepaid account.

The Bureau therefore considered whether, as some non-partisan research and advocacy organizations have suggested, it might be better for consumers to see all of a prepaid account's fees pre-acquisition for prepaid accounts sold in retail stores and all other acquisition scenarios to avoid putting the burden on consumers to seek out additional information. The Bureau declines to propose this approach for multiple reasons. First, the Bureau believes that recent research indicates that many consumers have difficulty comprehending and utilizing extensive amounts of information when making decisions about certain financial products.[259] Second, when consumers use a disclosure, recent research indicates they might have trouble identifying which information is relevant to them, prioritizing and comprehending the information they encounter, or utilizing that information to make the best choice for their situation.[260] The Bureau believes this comprehension difficulty could be exacerbated in a retail store where consumers often make acquisition decisions quickly. During its consumer testing, the Bureau also learned that only a few types of fees drive most consumers' decisions about prepaid accounts. The Bureau believes the proposed short form disclosure captures these fees. Third, when participants in the Bureau's consumer testing saw longer lists of fees during testing, they frequently cited one of the fees included on the short form disclosure as that which would most influence their decision about which prepaid product to acquire. In other words, testing participants were not relying on the additional information in the long form disclosure to make a decision. The results suggest that the participants would have reached the same decision reviewing a short form disclosure.

Testing participants also spent more time comparing two long form disclosures when engaging in a shopping comparison exercise Such time is additional time that the Bureau believes consumers are less likely to spend when shopping in a retail setting. Finally, consumers in testing also generally found it more difficult to perform side-by-side comparisons of two long form disclosures included on the inside of prototype packaging material versus comparing two short form disclosures provided on an outside surface of prototype packaging material. The Bureau also considered the significant cost to industry of providing the long form disclosure. As discussed above, the packaging adjustments including such a disclosure would likely require based on the space constraints in many retail locations.

To summarize, the Bureau proposes that, in retail stores, financial institutions may provide the proposed long form disclosure after acquisition, if the three conditions in proposed § 1005.18(b)(1)(ii)(A) through (C) are satisfied. The Bureau also notes that pursuant to proposed § 1005.18(f), all consumers, including those shopping in retail stores, would get a long form disclosure in the terms and conditions document that they receive after they have acquired a prepaid account. In a retail setting, the terms and conditions document would likely be provided inside the packaging material and immediately accessible to a consumer post-acquisition.

Nevertheless, the Bureau seeks comment on all aspects of this approach to fee disclosures for prepaid accounts

[258] The Nielsen Company, *The Digital Consumer, at 5* (Feb. 2014), *available at http://www.nielsen.com/content//corporate/us/en/reports-downloads/2014%20Reports/the-digital-consumer-report-feb-2014.pdf.* In 2012, the Board estimated that 35 percent of the U.S. population uses smartphones. *See* Bd. of Governors of the Fed. Reserve, *Consumers and Mobile Financial Services,* at 3 n1 (Mar. 2012), *available at http://www.Federalreserve.gov//mobile-device-report-201203.pdf (internal citations omitted).*

[259] *See* James Lacko & Janis Pappalardo, *The Failure and Promise of Mandated Consumer Mortgage Disclosures: Evidence from Qualitative Interviews and a Controlled Experiment with Mortgage Borrowers,* 100 a.m. Econ. Rev. 516 (2010); Kleimann Commc'n Group, *Know Before You Owe: Evolution of the Integrated TILA RESPA Disclosures* (July 9, 2012). *See generally,* Eric Johnson et al. *Can Consumers Make Affordable Care Affordable? The Value of Choice Architecture,* PLOS One, Dec. 2013, at 1, 2.

[260] *Id.*

sold in retail locations. Specifically, the Bureau seeks comment on what information consumers should receive when shopping for a prepaid account in a retail store and how comprehensive this information could be, given the space constraints imposed by J-hooks. The Bureau also seeks comment on whether to require disclosure of the long form pre-acquisition in retail stores instead of permitting financial institutions to only make it accessible to a consumer. Finally, the Bureau solicits comment on whether the two methods (Web site or telephone number) that the Bureau has proposed to include on the short form in retail stores are reliable ways for consumers to access the long form disclosure when shopping in a retail store, and whether there are other methods that could be required instead of or in addition to those that are proposed. The Bureau also seeks comment on whether it should require that consumers must be able to access the telephone number listed after regular business hours.[261]

Proposed comment 1005.18(b)(1)(ii)–1 would provide guidance on the definition of retail store. Specifically, proposed comment 1005.18(b)(1)(ii)–1 would explain that, for purposes of the proposed requirements of § 1005.18(b)(1)(ii), a retail store is a location where a consumer can obtain a prepaid account in person and that is operated by an entity other than a financial institution or by an agent of the financial institution. Proposed comment 1005.18(b)(1)(ii)–1 would further clarify that a bank or credit union branch is not a retail store, but that drug stores and grocery stores at which a consumer can acquire a prepaid account may be retail stores. Proposed comment 1005.18(b)(1)(ii)–1 would also clarify that a retail store that offers one financial institution's prepaid account products exclusively would be considered an agent of the financial institution, and, thus, both the short form and the long form disclosure must be provided pre-acquisition pursuant to proposed § 1005.18(b)(1)(i) in such settings.

The Bureau believes that if a financial institution is the sole provider of prepaid account products in a given retail store, or is otherwise an agent of the financial institution, then it is easier for the financial institution to manage the distribution of disclosures to a consumer, and they might be less dependent on the J-hook infrastructure to market their products to consumers. Thus, the Bureau believes that financial institutions with such exclusive relationships should have fewer hurdles to providing both the short form and long form disclosures to a consumer before acquisition. Nevertheless, the Bureau seeks comment on whether agents of the financial institution face space constraints in retail stores that would make it difficult to provide the short form and long form disclosures pre-acquisition.

Proposed comment 1005.18(b)(1)(ii)–2 would clarify that except when providing the long form disclosure post-acquisition in accordance with the retail store exception set forth in proposed § 1005.18(b)(1)(ii), the short form and long form disclosures required by proposed § 1005.18(b)(2)(i) and (ii) must be provided to a consumer pre-acquisition in compliance with proposed § 1005.18(b)(1)(i). Proposed comment 1005.18(b)(1)(ii)–2 would further explain that disclosures are considered to have been provided post-acquisition if they are inside the packaging material accompanying a prepaid account access device that a consumer cannot see or access before acquiring the prepaid account, or if it is not readily apparent to a consumer that he or she has the ability to access the disclosures inside of the packaging material. Proposed comment 1005.18(b)(1)(ii)–2 would also provide the example that if the packaging material is presented in a way that consumers would assume they must purchase the prepaid account before they can open the packaging material, the financial institution would be deemed to have provided disclosures post-acquisition.

Proposed comment 1005.18(b)(1)(ii)–3 would explain that a payroll card account offered to and accepted by consumers working in retail stores would not be considered a prepaid account acquired in a retail store for purposes of proposed § 1005.18(b)(1)(ii), and thus, a consumer would have to receive the short form and long form disclosures pre-acquisition pursuant to the timing requirement set forth in proposed § 1005.18(b)(1)(i). The Bureau does not believe that there are space constraints involved in offering payroll card accounts to retail store employees. Thus, the Bureau believes that retail store employees receiving payroll card accounts must receive both the short form and long form disclosures pre-acquisition in accordance with proposed § 1005.18(b)(1)(i).

Proposed comment 18(b)(1)(ii)–4 would clarify that pursuant to proposed § 1005.18(b)(1)(ii)(C), a financial institution must make the long form accessible to a consumer by telephone and by a Web site when not providing a printed version of the long form disclosure to a consumer prior to acquisition of a prepaid account. Proposed comment 18(b)(1)(ii)–4 would clarify that a financial institution could, for example, provide the long form disclosure by telephone using an interactive voice response system or by using a customer service agent.

18(b)(1)(iii) Disclosures for a Prepaid Account Acquired Orally by Telephone

Similar to its proposed alternative for retail stores, the Bureau is also proposing, for several reasons, to modify the general pre-acquisition disclosure requirement in proposed § 1005.18(b)(1)(i) when a consumer acquires a prepaid account orally by telephone. First, the Bureau believes prepaid accounts acquired by telephone introduce logistical challenges that make it difficult for financial institutions to provide both the short form and the long form disclosures to all consumers. The Bureau also believes that it may be more difficult for consumers to process information disclosed orally and that therefore, generally, less fee information should be provided when consumers acquire prepaid accounts by telephone. The Bureau acknowledges that consumers are probably less likely to comparison shop when acquiring prepaid accounts by telephone, but the Bureau believes that some consumers might want to compare the short form disclosure of prepaid account products they are considering acquiring orally by telephone to short form disclosures for other prepaid accounts that they might already possess or have available on their computer during the telephone call.

The Bureau is therefore proposing that before a consumer acquires a prepaid account orally by telephone, a financial institution must disclose orally the short form information that would be required by proposed § 1005.18(b)(2)(i). *See* proposed § 1005.18(b)(1)(iii). The Bureau believes that disclosing only limited information by telephone will increase the likelihood that a consumer will understand any information about the prepaid account when acquiring it orally by telephone. Proposed § 1005.18(b)(1)(iii) would further state that a financial institution may provide the disclosures required by § 1005.18(b)(2)(ii) after a consumer acquires a prepaid account orally by telephone if the financial institution

[261] The Bureau also considered requiring that financial institutions list an SMS short code on the short form disclosure provided in retail stores. *See* section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*11*) for a discussion of this alternative.

communicates to a consumer orally, before a consumer acquires the prepaid account, that the information required to be disclosed by § 1005.18(b)(2)(ii) is available orally by telephone and on a Web site.

The Bureau believes that a financial institution should be able to disclose information contained in the long form orally, by, for example, allowing a consumer to ask a customer service agent about a fee or by using an automated system, but the Bureau questions the effectiveness of requiring that the full long form disclosure be provided orally to every consumer. Rather, the Bureau believes that as long as consumers are made aware of their ability to access the information contained in the long form disclosure, they will be able to get enough information to make an informed acquisition decision. Those who wish to learn more about the prepaid account can do so, and financial institutions would not be unduly burdened by having to provide the long form disclosure to all consumers who acquire prepaid accounts by telephone.

The Bureau recognizes that proposed § 1005.18(b)(1)(ii)(C) would require that a financial institution always disclose the telephone number and the URL that a consumer can use to access in the long form disclosure on all short forms when qualifying for the retail store exception. But, for prepaid accounts acquired orally by telephone pursuant to proposed § 1005.18(b)(1)(iii), the Bureau believes it is sufficient to let a consumer know that the long form disclosure is available by telephone and through a Web site without having to actually dictate the telephone number and the URL of the Web site, unless a consumer requests them. A version of the long form, however, would still be required to be provided after acquisition in the prepaid account's initial disclosures. *See* proposed § 1005.18(f).

The Bureau seeks comment on all aspects of this part of the proposal. Specifically, the Bureau seeks comment on whether consumers will benefit from hearing the contents of only the short form disclosed orally. The Bureau also seeks comment on whether financial institutions should be required to disclose all fees associated with a prepaid account orally before acquisition instead of having the option not to disclose full fee information as long as they make consumers aware of the methods by which they can access the content of the long form disclosure.

Proposed comment 18(b)(1)(iii)–1 would explain that, for purposes of proposed § 1005.18(b)(1)(iii), a prepaid account is considered to have been acquired orally by telephone when a consumer speaks to a customer service agent or communicates with an automated system, such as an interactive voice response system, to provide personal identifying payment information to acquire a prepaid account, but would clarify that prepaid accounts acquired using a mobile device without speaking to a customer service agent or communicating with an automated system are not considered to have been acquired orally by telephone. The Bureau believes that the proposed general pre-acquisition disclosure requirement in proposed § 1005.18(b)(1)(i) should be modified when a consumer acquires a prepaid account orally by telephone. By contrast, if a consumer is using a smartphone to access a mobile application to acquire a prepaid account, and is not receiving disclosures about the prepaid account orally, the Bureau proposes that disclosures could be provided electronically pursuant to proposed § 1005.18(b)(3)(i)(B) and that a consumer still receive both the short form and long form disclosures pre-acquisition. Though a consumer may access a mobile application to acquire a prepaid account on a mobile phone device, the Bureau believes that once a consumer has entered the application, disclosures can be provided in a similar, if not identical, way to how they are offered on a Web site. Thus, the Bureau believes that in such a scenario the logistical challenges justifying an alternative requirement for accounts acquired orally using the telephone are not present.

Proposed comment 18(b)(1)(iii)–2 would explain how disclosures provided orally can comply with the pre-acquisition timing requirement in proposed § 1005.18(b)(2)(i). Specifically, proposed comment 18(b)(1)(iii)–2 would clarify that to comply with the pre-acquisition requirement set forth in proposed § 1005.18(b)(1)(i) for prepaid accounts acquired orally by telephone, a financial institution may, for example, read the short form disclosure required under proposed § 1005.18(b)(2)(i) over the telephone after a consumer has initiated the purchase of a prepaid account by calling the financial institution, but before a consumer agrees to acquire the prepaid account. Proposed comment 18(b)(1)(iii)–2 would also clarify that although the long form disclosure required by proposed § 1005.18(b)(2)(ii) is not required to be given pre-acquisition when a consumer acquires a prepaid account orally by telephone, a financial institution must communicate to a consumer that the long form is available upon request either orally by telephone or on a Web site. Finally, the proposed comment would clarify that a financial institution must provide information on all fees in the terms and conditions as required by existing § 1005.7(b)(5), as modified by proposed § 1005.18(f), before the first electronic fund transfer is made from a consumer's prepaid account.

18(b)(2) Content of Disclosures

Proposed § 1005.18(b)(2) would set forth substantive content requirements for the Bureau's proposed pre-acquisition disclosure regime. Specifically, proposed § 1005.18(b)(2)(i) would set forth the information a financial institution would have to provide on the short form disclosure, and proposed § 1005.18(b)(2)(ii) would set forth the information a financial institution would have to provide on the long form disclosure. The proposed content for each disclosure is discussed in detail below.

18(b)(2)(i) Short Form Content Requirements

Proposed § 1005.18(b)(2) would set forth substantive content requirements for the Bureau's proposed pre-acquisition disclosure regime. Specifically, proposed § 1005.18(b)(2)(i) would set forth the information a financial institution would have to provide on the short form disclosure, and proposed § 1005.18(b)(2)(ii) would set forth the information a financial institution would have to provide on the long form disclosure. The proposed content for each disclosure is discussed in detail below.

18(b)(2)(i) Short Form Content Requirements

As explained above, the Bureau is proposing that financial institutions provide a short form disclosure before a consumer acquires a prepaid account. *See* proposed § 1005.18(b)(1)(i). Proposed § 1005.18(b)(2)(i) would require disclosure of specific information on the short form about a prepaid account, including certain notices, fees, and other information, as applicable. Specifically, for all prepaid accounts, financial institutions would be required to disclose, in the static portion of the short form, the fee types set forth in proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*), even if such fees are not charged or if those features are not offered in connection with a particular prepaid account product. A disclosure regarding whether a prepaid account might offer an overdraft service or another type of credit feature to a consumer would also

be disclosed in the static portion of the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*9*). In addition, the short form would require, in proposed § 1005.18(b)(2)(i)(B)(*8*), disclosure of up to three additional fees most commonly incurred by users of a given prepaid account product in the prior 12-month period. This portion of the disclosure would vary across prepaid account products. Pursuant to proposed § 1005.18(b)(3)(iii)(A), the short form disclosure would be in a form substantially similar to the proposed Model Forms A–10(a) through (d).

Depending on the structure of a particular prepaid account, however, the Bureau understands that the short form may not capture all of a particular prepaid account's fees or explain the conditions under which a financial institution might impose those fees. The Bureau's consumer testing, however, indicated that when participants were shown prototype short forms, most understood that they represented only a subset of fee information and that they could potentially be charged fees not shown on the form. Further, except in certain retail stores or with respect to accounts acquired orally by telephone, under the proposed pre-acquisition disclosure regime, a consumer would receive a long form disclosure simultaneously with the short form and therefore have the opportunity to see all fees associated with a prepaid account and any relevant conditions before acquiring a prepaid account.[262] *See* proposed § 1005.18(b)(1)(i). Further, most testing participants did not identify any additional fees that they would like to see listed in a short form. The Bureau therefore believes that the proposed short form would contain most fees that might be charged in connection with a prepaid account, and those fees that are most important for a consumer to know in advance of acquiring a prepaid account.

The Bureau also recognizes that disclosing even this proposed subset of fee information on the short form runs the same risk of information overload that the Bureau believes could occur if all fees were disclosed to a consumer instead of just a subset of fees. The Bureau believes, however, based on its consumer testing and other research, that incorporating elements of visual hierarchy will mitigate these risks. Most importantly, the fee types that would be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) in the top-line of the short form would use font size and other elements to promote readability.[263] The Bureau is proposing to add comment 18(b)(2)(i)–1 to explain what a provider should disclose on the short form when fees are inapplicable to a particular prepaid account product. Specifically, proposed comment 18(b)(2)(i)–1 would explain that the disclosures required by proposed § 1005.18(b)(2)(i) must always be provided prior to prepaid account acquisition, even when a particular disclosure is inapplicable to a specific prepaid account. The proposed comment would also provide an example that if a financial institution does not charge a fee to a consumer for withdrawing money at an ATM in the financial institution's network or an affiliated network, which is a type of fee that would be required to be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*3*), the financial institution should list ''ATM withdrawal (in network)'' on the short form disclosure and list ''$0'' as the fee. Proposed comment 18(b)(2)(i)–1 would further clarify that if, however, the financial institution does not allow a consumer to withdraw money from ATMs that are in the financial institution's network or from those in an affiliated network, the financial institution would still have to list ''ATM withdrawal (in-network)'' and ''ATM withdrawal (out-of-network)'' on the short form disclosure but instead state ''not offered'' or ''N/A.'' The Bureau believes it important that the static portion of the short form disclosure would list identical account features and fee types across all prepaid account products, to enable consumers to quickly determine and compare the potential cost of certain offered features.

The Bureau is also proposing to adopt comment 18(b)(2)(i)–2, to further explain how to disclose fees and features on the short form disclosure. Specifically, the proposed comment would explain that no more than two fees could be listed for each fee type required to be listed by proposed § 1005.18(b)(2)(i)(B)(*2*), (*3*) and (*5*) in the short form disclosure, and that only one fee could be disclosed for each fee type required to be listed by proposed § 1005.18(b)(2)(i)(B)(*1*), (*4*), (*6*), (*7*) and (*8*). The proposed comment would clarify, however, that proposed § 1005.18(b)(2)(i)(B)(*8*) would require the disclosure of up to three additional fees. Finally, the proposed comment would clarify that for example, if a financial institution offers more than one method for loading cash into a prepaid account, only the fee for the method that would charge the highest fee would be disclosed, and the financial institution could use an asterisk or other symbol next to the cash reload fee disclosed to indicate that the fee may be lower. *See* section-by-section analysis of proposed comment 18(b)(2)(i)(C)–1.

As discussed in detail above, the Bureau believes that simplicity and clarity are important goals of the short form disclosure. Insofar as allowing complicated explanations and multiple different fees to be disclosed for a particular feature could disrupt those goals, the Bureau proposes that for most fees on the short form, a financial institution only be permitted to list one fee—the highest fee a consumer could incur for a particular activity, as discussed in more detail below in the section-by-section analysis of proposed § 1005.18(b)(2)(i)(C). The Bureau notes that these limitations would only apply to the short form disclosure; the financial institution would have both the long form disclosure and any other portion of the packaging material or Web site to disclose other relevant fees.

The Bureau also believes there is particular value in maintaining simplicity on the short form by limiting the top-line portion of the form in order to encourage consumer engagement with the disclosure. Thus, the Bureau is proposing to require only four fee types in the top-line. For two of those fee types—per purchase fees and ATM withdrawal fees—the Bureau is also proposing to require disclosure of two fee values. *See* proposed comment 18(b)(2)(i)–2. The Bureau believes that it is important to include two per purchase fees—a per purchase fee when a consumer uses a signature and a per purchase fee when a consumer uses a PIN—because consumers could potentially incur these fees every time they use their prepaid accounts, and the fee could vary depending on how a consumer completes the transaction. The Bureau believes including two per purchase fees will highlight for consumers that the fees for completing a transaction using a personal identification number versus the fee for using a signature could differ. Similarly, the Bureau believes that it is important to include two ATM withdrawal fees in order to highlight that fees for in-network and out-of-network transactions may differ and to signal to consumers that the product's ATM network may have an impact on the fee incurred, which could lead a consumer to seek out more information about the

[262] For prepaid accounts acquired in retail stores or orally by telephone, the long form would have to be made available to the consumer either electronically or by telephone. *See* section-by-section analysis of proposed § 1005.18(b)(1)(ii) and (iii).

[263] *See* the section-by-section analysis of proposed § 1005.18(b)(4)(iii).

relevant network. The Bureau notes that in its testing, some participants were confused about the meaning of an ATM network.

By contrast, the Bureau is proposing to allow only one periodic fee and one cash reload fee to be listed in the top-line of the short form. The Bureau acknowledges that both of these fees might also vary based, for example, on how often a consumer uses a prepaid account or the method used to reload cash into a prepaid account. Despite this possibility for variation, however, the Bureau believes consumers will benefit more from immediately seeing the two ways the per purchase and ATM withdrawal fees may vary.

The Bureau seeks comment on all aspects of this part of the proposal. Specifically, the Bureau solicits feedback on whether mandating disclosure of inapplicable features on the short form disclosure would be unnecessarily confusing to consumers, or whether financial institutions will find it difficult to explain elsewhere on a prepaid account access device's packaging material or on their Web sites that certain features may not be available. In addition, the Bureau seeks comment on whether only providing the highest fee on the short form disclosure for a given fee type will be misleading to consumers, even when financial institutions include a symbol, like an asterisk, to indicate the fee amount could vary. The Bureau also seeks comment on the proposed type of and number of fees included in the top-line portion of the form, as discussed further below in the section-by-section analysis of proposed § 1005.18(b)(4)(iii). Finally, the Bureau also solicits comment on whether the cost of purchasing or activating a prepaid account should be included on the short form disclosure.

18(b)(2)(i)(A) Payroll Card Account Notices

Pursuant to existing § 1005.10(e)(2), no financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit. *See also* existing comment 10(e)(2)–1 and proposed comment 10(e)(2)–2. The Bureau believes it is important for consumers to realize they have the option of not receiving payment of wages via a payroll card account, and that receiving such notice at the top of the short form disclosure will help to ensure consumers are aware of this right. Thus, the Bureau is proposing that a notice be provided at the top of the short form for a payroll card account to highlight for consumers that they are not required to accept a particular payroll card account.

Specifically, proposed § 1005.18(b)(2)(i)(A) would require that, when offering a payroll card account, a financial institution must include a statement on the short form that a consumer does not have to accept the payroll card account, and that a consumer can ask about other methods to get wages or salary from the employer instead of receiving them via a payroll card account, in a form substantially similar to the language set forth in Model Form A–10(b). The Bureau is proposing a similar notice requirement for government benefit accounts. Proposed § 1005.18(b)(2)(i)(A) would state that for requirements regarding what notice to give a consumer when offering a government benefit account, see proposed § 1005.15(c)(2).

18(b)(2)(i)(B) Fees and Other Information

18(b)(2)(i)(B)(*1*) Periodic Fee

Proposed § 1005.18(b)(2)(i)(B)(*1*) would require disclosure of a periodic fee charged for holding a prepaid account, assessed on a monthly or other periodic basis, using the term ''Monthly fee,'' ''Annual fee,'' or a substantially similar term. This proposed provision is intended to capture regular maintenance fees that a financial institution levies on a consumer solely for having a prepaid account for a period of time, whether the fee is charged monthly, annually, or for some other period of time. A financial institution could choose a label for this fee that accurately reflects the relevant periodic interval. Pursuant to the formatting requirements in proposed § 1005.18(b)(4), a financial institution would be required to disclose this fee in the top-line of the short form disclosure.

The Bureau believes that all prepaid accounts should disclose such a periodic fee, or the absence thereof, for several reasons. First, the Bureau's analysis of fee data indicates that many prepaid accounts charge a recurring fee, typically on a monthly basis. Second, the Bureau believes a periodic fee is one that consumers will likely pay no matter what other fees they incur because it is imposed for maintaining the prepaid account, unless a financial institution offers a way for a consumer to avoid that fee (*e.g.,* through the receipt of a regular direct deposit or maintaining a certain average daily account balance). Those prepaid accounts that do not assess a periodic fee often charge other fees instead, typically per purchase fees.[264] The Bureau therefore believes that the lack of a periodic fee is also an important feature of a prepaid account that should be included in the top-line to allow consumers to more easily identify this trade-off between periodic fees and per purchase fees. Third, the Bureau believes that the existence of a monthly fee (or lack thereof) is typically a key factor in a consumer's decision about whether to acquire a particular prepaid account. Additionally, in the Bureau's testing, participants frequently cited periodic fees as one of the most important factors influencing their decision about which prepaid account product to acquire.

18(b)(2)(i)(B)(*2*) Per Purchase Fee

Proposed § 1005.18(b)(2)(i)(B)(*2*) would require disclosure of two fees for making a purchase using a prepaid account, both for which when a consumer uses a personal identification number and when a consumer provides a signature, including at point-of-sale terminals, by telephone, on a Web site, or by any other means, using the term ''Per purchase fee'' or a substantially similar term, and ''with PIN'' or ''with sig.,'' or substantially similar terms.

Although the Bureau understands that most prepaid accounts do not charge per transaction fees for purchases of goods or services from a merchant, some do. When charged, the impact of these fees could be substantial for consumers who make multiple purchases. Often these fees are charged when periodic fees are not (*see* proposed § 1005.18(b)(2)(i)(B)(*1*)), and thus a consumer may be choosing between a prepaid account that has no monthly fee but charges for each purchase and a prepaid account that has a monthly fee but no per purchase charge. Therefore, the Bureau believes it appropriate for all prepaid accounts to disclose on the short form both whether there is a per purchase fee and, if so, the fee for making those purchases. The Bureau's model forms (*see* proposed Model Forms A–10(a) through (d)) would disclose this amount on the top-line portion of the short form.

The Bureau further recognizes that a handful of prepaid accounts charge a different per purchase fee depending on whether the purchase is processed as a signature or PIN transaction. While PIN debit transactions require input of the accountholder's PIN code at the time of authorization of the transaction, for a signature transaction, the accountholder

[264] Per purchase fees are also proposed to be on the top-line of the short form. *See* proposed § 1005.18(b)(2)(i)(B)(*2*).

may sign for the transaction but does not need to enter his or her PIN code. The Bureau is therefore proposing model forms for prepaid accounts that disclose both fees for these two authorization methods. *See* proposed Model Forms A–10(a) through (d). Nevertheless, the Bureau seeks comment on whether two per purchase fees should be disclosed on the short form disclosure. The Bureau also solicits comment on whether there are additional per purchase fees beyond using a PIN or a signature that the Bureau should consider including in the short form disclosure.

18(b)(2)(i)(B)(*3*) ATM Withdrawal Fees

Proposed § 1005.18(b)(2)(i)(B)(*3*) addresses disclosure on the short form of ATM fees for withdrawing cash. Specifically, proposed § 1005.18(b)(2)(i)(B)(*3*) would require disclosure of two fees for using an ATM to initiate a withdrawal of cash in the United States from a prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution, using the term ''ATM withdrawal fee'' or a substantially similar term, and ''in-network'' or ''out-of-network,'' or substantially similar terms. The Bureau's model forms (*see* proposed Model Forms A–10(a) through (d)) would disclose these ATM withdrawal fees on the top-line portion of the short form.

The Bureau understands that most prepaid accounts have ATM fees that differ depending on whether the ATM is in a network of which the financial institution that issued the card is a member or an affiliate. Typically, prepaid account cards can also be used on other ATM networks of which the issuing financial institution is not a member or an affiliate. Insofar as accessing these networks often costs the financial institution more, they typically charge a higher fee to a consumer for using that out-of-network ATM. For example, one current prepaid account product charges $0 for in-network ATM withdrawals and $2 for ATM withdrawals that occur out-of-network. Given that such potential variances are common, the Bureau believes that disclosure of fees for both in- and out-of-network ATMs withdrawals is important. Although the Bureau notes that many participants during its consumer testing were unfamiliar with the difference between ''in-network'' and ''out-of-network,'' the Bureau believes the inclusion of these two fees on the top-line of the proposed short form would highlight for consumers that such fee variations can occur and the importance of understanding the ATM network associated with a particular prepaid account product.

Nevertheless, the Bureau seeks comment on whether disclosure of additional information regarding ATM withdrawal fees and ATM networks is necessary on the short form. Specifically, the Bureau solicits comment on whether the in- versus out-of network distinction makes sense for prepaid accounts. The Bureau also solicits comment on whether there are additional types of ATM withdrawal fees (other than foreign ATM withdrawal fees, which are discussed below) that should be included in the short form. For example, the Bureau is aware that some financial institutions impose different ATM withdrawal fees on ATMs that are ''bank-owned.''

Proposed comment 18(b)(2)(i)(B)(*3*)–1 would clarify that if the fee imposed on the consumer for using an ATM in a foreign country to initiate a withdrawal of cash is different from the fee charged for using an ATM in the United States within or outside the financial institution's network or a network affiliated with the financial institution, a financial institution would not disclose the foreign ATM fee pursuant to proposed § 1005.18(b)(2)(i)(B)(*3*), but may be required to do so pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*), as part of the incidence-based fee disclosure.

18(b)(2)(i)(B)(*4*) Cash Reload Fee

Proposed § 1005.18(b)(2)(i)(B)(*4*) would require disclosure of a fee for loading cash into a prepaid account using the term ''Cash reload'' or a substantially similar term. Cash reloads are one of the primary ways for a consumer to add funds to a prepaid account. As such, the Bureau believes that the existence of a cash reload service and the amount of any fee for using such a service, if any, is important for consumers to know insofar this is a key feature of many prepaid accounts. Further, the Bureau's model forms (*see* proposed Model Forms A–10(a) through (d)) would disclose the cash reload fee on the top-line of the short form disclosure as described in the section-by-section analysis of proposed § 1005.18(b)(4)(i).

The Bureau also proposes to adopt new comment § 1005.18(b)(2)(i)(B)(*4*)–1, which would provide guidance on what would be considered a cash reload fee. Specifically, the proposed comment would explain that the cash reload fee, for example, would include the cost of adding cash at a point-of-sale terminal, or the cost of purchasing an additional card or other device on which cash is loaded and then transferred into a prepaid account, or any other method a consumer may use to load cash into a prepaid account. This proposed comment would also clarify that if a financial institution offers more than one method for a consumer to load cash into the prepaid account, proposed § 1005.18(b)(2)(i)(C) would require that it only disclose the highest fee on the short form. The Bureau notes that consumers may incur additional third party fees when loading cash onto a card or other access device; these expenses are typically not controlled by the financial institution or program manager and instead are charged by the entity selling the cash reload product. Such fees would not be incorporated into the proposed short form disclosure. *See* proposed comment § 1005.18(b)(2)(i)(C)–2. The Bureau notes, however, that, pursuant to proposed comment 18(b)(2)(ii)(A)–3, fees imposed by third parties acting as an agent of the financial institution would always have to be disclosed in the long form.

The Bureau considered requiring financial institutions to list on the short form disclosure both cash reload methods discussed in proposed comment 18(b)(2)(i)(B)(*4*)–1: Loads via a point-of-sale terminal and loads via an additional card or other device. The Bureau recognizes that many prepaid accounts make both methods available to consumers and only allowing providers to list the fee for the method that imposes the highest fee could confuse consumers about which methods are available, and inhibit their ability to accurately estimate the fees they will incur based on the method they most commonly utilize. The Bureau, however, believes it is important to limit the amount of information on the short form disclosure to maintain its simplicity in order to facilitate consumer understanding of the information that is included. Further, in testing, the Bureau found that participants consistently understood a disclosure containing a single cash reload fee, and therefore the Bureau does not believe it is as important to include two fees for this fee type. Although the Bureau is proposing to allow only the highest cash reload fee to be disclosed in the short form, however, financial institutions would be able to use an asterisk or other symbol pursuant to proposed § 1005.18(b)(2)(i)(C) discussed below (in addition to any other part of the packaging material or Web site) to indicate when more than one method exists for reloading cash into a prepaid account.

18(b)(2)(i)(B)(*5*) ATM Balance Inquiry Fees

Directly below the proposed top-line disclosure in the short form disclosure, the Bureau proposes to include balance inquiry fees charged by the financial institution for inquiring into the prepaid account's balance at an ATM. Specifically, proposed § 1005.18(b)(2)(i)(B)(*5*) would require disclosure of two fees for using an ATM to check the balance of a consumer's prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution, using the term ''ATM balance inquiry'' or a substantially similar term, and ''in-network'' or ''out-of-network,'' or substantially similar terms.

As discussed above regarding disclosure of ATM withdrawal fees the Bureau believes it is important for consumers to know that different fees could be imposed when requesting balance inquiries at an ATM in a financial institution's network or outside of the network. The Bureau, however, does believe it is less common for consumers to initiate ATM balance inquiries transactions compared to withdrawals at ATMs, and thus, the Bureau is not proposing to include the two balance-inquiry fees in the top-line of the short form disclosure. Nevertheless, the Bureau seeks comment on whether consumers incur ATM balance inquiry fees frequently enough to justify including these fees in the top-line of the short form disclosure.

Proposed comment 18(b)(2)(i)(B)(*5*)–1 would clarify that if the fee imposed on a consumer for using an ATM in a foreign country to check the balance of a consumer's prepaid account is different from the fee charged for using an ATM within or outside the financial institution's network or a network affiliated with the financial institution in the United States, a financial institution would not disclose the foreign ATM balance inquiry fee pursuant to proposed § 1005.18(b)(2)(i)(B)(*5*), but could be required to do so by proposed § 1005.18(b)(2)(i)(B)(*8*), discussed below.

18(b)(2)(i)(B)(*6*) Customer Service Fee

Proposed § 1005.18(b)(2)(i)(B)(*6*) would require disclosure on the short form of any fee for calling the financial institution or its service provider, including an interactive voice response system, about a consumer's prepaid accounts using the term ''Customer service fee'' or a substantially similar term. The Bureau believes that many consumers regularly have issues with their prepaid accounts that require talking to a customer service agent by telephone. The Bureau also believes that some providers impose fees for making such a call. Additionally, several participants in testing reported having incurred such customer service fees. For these reasons, the Bureau believes that the short form disclosure should include this fee. This disclosure would be required even if the financial institution did not charge such a fee. *See* proposed comment 18(b)(2)(i)–1.

18(b)(2)(i)(B)(*7*) Inactivity Fee

Proposed § 1005.18(b)(2)(i)(B)(*7*) would require disclosure of a fee for non-use, dormancy, or inactivity on a prepaid account, using the term ''Inactivity fee'' or a substantially similar term, as well as the duration of inactivity that triggers a financial institution to impose such an inactivity fee.[265] The Bureau believes that many financial institutions charge consumers fees when they do not use their prepaid account for a specified period of time. The Bureau believes disclosure of these fees is important insofar as consumers sometimes acquire a prepaid account for occasional use; such consumers may want to know that a particular prepaid account product charges fees for inactivity.[266] Thus, the Bureau is proposing that financial institutions disclose the existence, duration, and amount of inactivity fees, or that no such fee will be charged, as part of the static portion of the short form disclosure. The Bureau notes, however, that, as with all the disclosures in the short form, the requirement to disclose a particular fee type is not an endorsement of the practice of imposing such a fee.

The Bureau, however, also believes that a lower inactivity fee may correlate with a prepaid account product imposing a higher monthly periodic fee on a consumer. Thus, a consumer who uses a prepaid account only sporadically, but often enough to not reach the dormancy period that would trigger the inactivity fee, might actually incur higher fees if they shop based on the inactivity fee instead of the monthly periodic fee. The Bureau considered whether the risk of potential confusion to a consumer outweighs the benefit of including the inactivity fee on the short form disclosure, but believes that providing consumers with the inactivity fee amount and the relevant duration of dormancy will allow consumers to make an informed choice about which prepaid account product is best for their usage patterns.

Proposed comment 18(b)(2)(i)(B)(*7*)–1 would clarify that when a financial institution is disclosing the inactivity fee in the long form disclosure pursuant to proposed § 1005.18(b)(2)(ii)(A), a financial institution should specify whether this inactivity fee is imposed in lieu of or in addition to the periodic fee disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*).

The Bureau seeks comment on all aspects of this part of the proposal. Specifically, the Bureau seeks comment on including the inactivity fee as part of the static portion of the short form disclosure could confuse consumers, and whether it is important to communicate the potential relationship between inactivity fees and monthly periodic fees more clearly on the short form disclosure.

18(b)(2)(i)(B)(*8*) Incidence-Based Fee Disclosures

In addition to the fee types that all financial institutions would have to disclose in the static portion of the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*), the Bureau is proposing that financial institutions would also disclose up to three additional ''incidence-based'' fees not already disclosed elsewhere on the short form that are incurred most frequently for that particular prepaid account product. If a financial institution offers several prepaid account products, the incidence-based fees analysis would be conducted separately for each product, based on usage patterns in the prior 12-month period. Thus, the incidence-based fees provided to a consumer on the short form disclosure could vary from one product to the next depending on which fees consumers incurred most frequently for a particular prepaid account product.

The Bureau is proposing this disclosure because it is concerned that, while the fee types disclosed in the static portion of the short form under the proposed rule should generally include the key fees on most prepaid accounts, that list is not comprehensive and there could be other fees that consumers might incur with some frequency. The Bureau is also concerned that absent this incidence-based disclosure, there is a risk of evasion. For example, a financial institution could restructure its fee schedule for a prepaid account product to make the fees disclosed in the static portion of the

[265] The Bureau understands that some States bar or limit inactivity fees, and nothing in this portion of the proposal is meant to preempt any applicable State laws.

[266] In testing, several participants mentioned only using their prepaid cards occasionally.

short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*) cheaper, knowing they would not be the fees that consumers would most frequently pay. The Bureau believes that requiring financial institutions to disclose other fees that are frequently paid by consumers will limit the ability of financial institutions to evade disclosing relevant fee information upfront on the short form disclosure. Additionally, the Bureau believes that the incidence-based portion of the short form, though it does mandate a specific metric to determine which additional fees may be listed, would also provide some flexibility to industry participants to disclose three more fee types that might be particular to their prepaid account product and are imposed for features that could be appealing to consumers.

Accordingly, the Bureau is proposing § 1005.18(b)(2)(i)(B)(*8*), which would establish a three-part provision to determine which incidence-based fees a financial institution must include on its short form disclosures. First, proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would require, except as provided in proposed § 1005.18(b)(2)(i)(B)(*8*)(II) or (III), disclosure of up to three fees, other than any of those disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*), that were incurred most frequently in the prior 12-month period by consumers of that particular prepaid account product.

Thus, for existing prepaid account products, proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would require that at the same time each year, a financial institution assess whether the incidence-based fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(I) were the most frequently incurred fees in the prior 12-month period, in accordance with the timing requirements of proposed § 1005.18(h). Proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would further require that the financial institution would then have to, if necessary and within 90 days, revise the incidence-based fees on disclosures provided in written or electronic form pursuant to proposed § 1005.18(b)(1)(i). Disclosures provided on the packaging material of prepaid account access devices, for example, in retail stores pursuant to proposed § 1005.18(b)(1)(ii), or in other locations, must be revised when the financial institution is printing new packaging material for its prepaid account access devices, in accordance with the timing requirements in proposed § 1005.18(h). Proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would also require that all disclosures provided pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(I) and created after a financial institution makes an incidence-based fee assessment and determines changes are necessary, would have to include such changes in accordance with the timing requirements in proposed § 1005.18(h). This final requirement in proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would apply to all disclosures, whether in written or electronic form, or on the packaging material of a prepaid account product sold in a retail store.

The Bureau believes that it is important for the incidence-based fee disclosure to list a prepaid account product's most commonly incurred fees. The Bureau, however, recognizes that financial institutions would need time to update disclosures upon assessing whether any changes to the incidence-based fee disclosure are needed, although it expects such changes to be infrequent. The Bureau believes such updates will be easier for disclosures provided in electronic form or in written form outside of a retail setting. Thus, the Bureau is proposing that financial institutions would have to make written and electronic updates within 90 days to ensure that consumers receive up-to-date incidence-based fee disclosures. The Bureau, however, recognizes that it could be more complicated and time-consuming for financial institutions to make updates to packages used to market prepaid accounts in retail stores, and is therefore proposing that financial institutions would be able to implement updates on packaging material whenever they are printing new stock during normal inventory cycles. The Bureau acknowledges that this proposal could result in some disclosures for the same prepaid account product (*i.e.,* electronic disclosures provided online or printed disclosures provided in person without the use of packaging) having different incidence-based fee disclosures on the short forms provided on retail store packaging material. The Bureau, however, does not believe that this discrepancy will significantly impact a consumer's decision regarding which prepaid account product to acquire since consumers will most likely compare the disclosures for two distinct products, and not consider disclosures for the same prepaid account product found in different acquisition channels.

The Bureau also recognizes that allowing financial institutions to continue to use packaging with out-of-date incidence-based fee disclosure in retail stores could reduce the effectiveness of this disclosure. The Bureau, however, believes that imposing a cut-off date after which sale or distribution of out-of-date retail packages would be prohibited could be overly burdensome. Nevertheless, the Bureau seeks comment about whether not including such a cut-off date would negatively impact consumers in a significant way.

Though the Bureau is not proposing specific package update requirements for the incidence-based fee disclosure, the Bureau notes, however, that financial institutions generally must ensure all other fee types and amounts disclosed pre-acquisition, whether on retail packaging, online, or through other means, are accurate at the time such disclosures are provided. The Bureau, therefore, does not believe that a general disclosure update requirement is necessary for non-incidence-based fee disclosures provided before a consumer acquires a prepaid account, as a financial institution must continue to honor whatever fee schedule it provides a consumer.

The Bureau is also proposing to adopt several comments to provide additional guidance on incidence-based fee disclosures. First, proposed comment 18(b)(2)(i)(B)(*8*)–1 would clarify how many additional fees a financial institution must disclose pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(I) and when disclosure of fewer than three incidence-based fees would be permitted. Specifically, the proposed comment would explain that if a prepaid account product only has one, two or three fees not already disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*), proposed § 1005.18(b)(2)(i)(B)(*8*) would require disclosure of these fees assuming it was incurred by a consumer at least once during the prior 12-month period. Proposed comment 18(b)(2)(i)(B)(*8*)–1 would also clarify that, conversely, if a prepaid account has four fees not already disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*), proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would require disclosure of the three fees most frequently incurred. Finally, the proposed comment would clarify that if the disclosures made pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*) capture a prepaid account product's entire fee schedule, a financial institution has no obligation to disclose additional information on the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(I).

The Bureau also proposes to add comment 18(b)(2)(i)(B)(*8*)–2, which would clarify how to determine which fees were incurred most frequently in the prior 12-month period. Specifically, the proposed comment would explain

that incidence should be considered on a total basis across all consumers using a particular prepaid account product. The proposed comment would further clarify that, for example, if a given consumer incurred one fee type ten times during the prior 12-month period, all ten instances of that individual consumer's paying such a fee would be factored into the total incidence calculation for that fee type. The proposed comment would also clarify that if a financial institution offers more than one prepaid account product, it would have to consider a consumers' fee incidence for each product separately and not consolidate the fee incidence across all of its prepaid account products. Finally, the proposed comment would clarify that the price for purchasing or activating a prepaid account could be an incidence-based fee for purposes of proposed § 1005.18(b)(2)(i)(B)(*8*).

Proposed comment 18(b)(2)(i)(B)(*8*)(I)–3 would provide guidance on the relationship between proposed § 1005.18(b)(2)(i)(B)(*8*)(I) and the proposed effective date regime in proposed § 1005.18(h). Specifically, the proposed comment would explain that § 1005.18(h)(2) further requires a financial institution to make its first incidence-based fee assessment in time to ensure that all prepaid accounts and related packaging material, access devices, and physical other materials, that are offered, sold, or otherwise made available to consumers in connection with a prepaid account include the incidence-based disclosure within 12 months. The proposed comment would also clarify that if a financial institution creates new disclosures within nine months of the effective date, those disclosures would need to include the appropriate incidence-based fee disclosure in accordance with proposed § 1005.18(h)(1). Proposed comment 18(b)(2)(i)(B)(*8*)(I)–4 would explain how to disclose incidence-based fees for those prepaid account products that give consumers the opportunity to choose among multiple service plans with different fee schedules.[267] Specifically, the proposed comment would explain that when disclosing multiple service plans on a short form disclosure as permitted by proposed § 1005.18(b)(3)(iii)(B) (discussed below), a financial institution must consider the frequency with which fees are incurred from all of those plans as a whole to determine which three additional fees to disclose pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(I). The Bureau recognizes that it is possible the most commonly incurred fees among all of the multiple service plans could also be one of the fees that varies in amount depending on the service plan selected by a consumer. But the Bureau believes it is unlikely because the short form will capture most fees charged by most prepaid account providers, and the multiple service plans, when available, will only have those plans fee schedules vary based on a couple of fee types—typically, the periodic fee and the per purchase fees, both of which are already required to be disclosed for each service plan. Thus, the Bureau believes it is unlikely that one of the remaining fees that could qualify for the incidence-based fee requirement would vary across service plans. The Bureau, however, seeks comment on whether it is actually the case that most prepaid account products offering multiple service plans only vary based on a couple of fee types. If, however, the financial institution is disclosing the fee schedule for only the service plan in which a consumer is enrolled by default upon acquiring the prepaid account, the proposed comment would further clarify that it would consider only the fee incidence for that service plan . The proposed comment would also reference that proposed comment 18(b)(3)(iii)(B)–1 provides guidance on what would constitute multiple service plans. Proposed comment 18(b)(2)(i)(B)(*8*)(I)–5 would explain that proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would not require that financial institutions immediately destroy existing inventory in retail stores or elsewhere in the distribution channel, to the extent the disclosures on such packaging materials are otherwise accurate, to comply with proposed § 1005.18(b)(2)(i)(B)(*8*)(I). The proposed comment would further clarify that for example, if a financial institution determines that an incidence-based fee listed on a short form disclosure in a retail store is no longer one of the most commonly incurred fees and makes the appropriate change when printing new disclosures, any packages in retail stores that contain the previous incidence-based fee disclosure could still be sold and the financial institution would comply with proposed § 1005.18(b)(2)(i)(B)(*8*)(I).

18(b)(2)(i)(B)(8)(II). Recognizing that new prepaid products have no prior fee data history, the Bureau is also proposing additional requirements to address such circumstances. Thus, proposed § 1005.18(b)(2)(i)(B)(*8*)(II) would require that, if a particular prepaid account product was not offered by the financial institution during the prior 12-month period, the financial institution would have to disclose up to three fees other than any of those fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*) that it reasonably anticipates will be incurred by consumers most frequently during the next 12-month period. Proposed § 1005.18(b)(2)(i)(B)(*8*)(II) would also provide that the incidence-based fee disclosures for newly-created prepaid account products would have to be included on all disclosures created for the prepaid account product, whether the disclosure is written, electronic, or on the packaging material of a prepaid account product sold in a retail store, in accordance with the timing requirements in proposed § 1005.18(h). Although financial institutions do not have actual fee data for new prepaid account products, the Bureau believes that they nonetheless would have a reasonable expectation as to which fees will be incurred most frequently. Thus, proposed § 1005.18(b)(2)(i)(B)(*8*)(II) would require institutions, for those prepaid account products without prior fee data, to estimate in advance the fees that should be disclosed in the incidence-based portion of the short form disclosure.

The Bureau proposes to add commentary and provide examples explaining how to apply proposed § 1005.18(b)(2)(i)(B)(*8*)(II) in situations where a financial institution has inadequate data regarding a prepaid account's fee history. Specifically, proposed comment 18(b)(2)(i)(B)(*8*)(II)–1 would explain that the provider should use available data to reasonably anticipate what fees should be disclosed. The proposed comment would also provide guidance about what is considered a new prepaid account product. Specifically, the proposed comment would clarify that, for example, if a financial institution changes the name of its prepaid account product and develops a new marketing and distribution plan but does not alter the prepaid account's fee schedule, this would be considered a new prepaid account product for purposes of proposed § 1005.18(b)(2)(i)(B)(*8*)(II); however, insofar as the fee schedule remains unchanged, and the financial institution reasonably anticipates that the fees it previously disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would remain unchanged, the financial institution should continue to disclose those fees for an additional 12-month period.

[267] See section-by-section analysis of § 1005.18(b)(3)(iii)(B) and comment 18(b)(3)(iii)(B)–1 for a more detailed discussion of how the Bureau defines multiple service plans for prepaid account products under the proposed pre-acquisition disclosure regime.

1005.18(b)(2)(i)(B)(8)(III). The Bureau is also proposing to add additional requirements for when a particular prepaid account product's fee schedule changes. Specifically, proposed § 1005.18(b)(2)(i)(B)(*8*)(III) would require that if a financial institution changes an existing prepaid account product's fee schedule at any point after assessing its incidence-based fee disclosure pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(I), it would have to determine whether, after making such changes, it reasonably anticipates that the existing incidence-based fee disclosure would represent the most commonly incurred fees for the remainder of the current 12-month period. If the financial institution reasonably anticipates that the current incidence-based fee disclosure would not represent the most commonly incurred fees for the remainder of the current 12-month period, it would have to update the incidence-based fee disclosure within 90 days for disclosures provided in written or electronic form, in accordance with the timing requirements in proposed § 1005.18(h).

Proposed § 1005.18(b)(2)(i)(B)(*8*)(III) would also state that disclosures provided on a prepaid account product's packaging material, for example, in retail stores pursuant to proposed § 1005.18(b)(1)(ii), or in other locations, must be revised when the financial institutions is printing new packaging material, in accordance with the timing requirements of proposed § 1005.18(h). Finally, proposed § 1005.18(b)(2)(i)(B)(*8*)(III) would also state that all disclosures provided pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(III) and created after a financial institution makes an incidence-based fee assessment and determines changes are necessary must include such changes, in accordance with the timing requirements of proposed § 1005.18(h). Proposed comment 18(b)(2)(i)(B)(*8*)(III)–1 would also provide several examples of demonstrate how different changes to an existing prepaid account product could impact the incidence-based fee disclosure. Specifically, the proposed comment would explain that, for example, if a financial institution changes its card replacement fee from $3.00 to $4.00 in May after already assessing in January whether the incidence-based fees need to be updated for the current 12-month period, this change in the fee schedule would subject the prepaid account product to proposed § 1005.18(b)(2)(i)(B)(*8*)(III). The proposed comment would further explain that, in this example, the financial institution would assess whether it reasonably anticipates that the existing incidence-based fee disclosure still lists what will be the most commonly incurred fees from May until the following January when the financial institution would conduct its next, annual incidence-based fees assessment.

The Bureau notes that its proposed model forms do not isolate or identify these incidence-based fees in a way that distinguishes them from the other fees disclosed under proposed § 1005.18(b)(2)(i)(B)(*5*)–(*7*) that are not required to be in the top-line. Thus, a consumer comparing two different prepaid account products may see some types of fees that are the same (the seven standardized fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*)–(*7*)) and may see some that differ (the three incidence-based fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)). During its consumer testing, the Bureau tested language identifying the incidence-based fees as such, but this language was often ignored or misunderstood by participants. Nevertheless, the Bureau recognizes that some variation on the short form fee disclosure could lead to confusion, and thus the Bureau seeks comment on whether the model forms should more clearly indicate to a consumer the meaning of the incidence-based fees.

The Bureau also recognizes that the proposed procedure for determining and disclosing incidence-based fees could be complicated in some instances, particularly for new prepaid accounts or those with revised fee schedules. Further, the Bureau acknowledges that basing the incidence-based fees determination on fee incidence might not make sense for all prepaid products. Thus, the Bureau seeks comment on all aspects of this incidence-based fees proposal. Specifically, the Bureau solicits feedback on whether other measures, such as fee revenue, would be better measures of the most important remaining fees to disclose to consumers considering a prepaid account. Relatedly, the Bureau seeks comment on whether there should be a de minimis threshold below which changes to the incidence ranking would not require form revisions, and if so, what that threshold should be. Such comments would be most useful if aided by data supporting the suggested threshold. The Bureau also seeks comment on how often financial institutions should be required to update the incidence-based fees disclosures, whether financial institutions should have to all conduct their incidence-based fee assessment at the same time in the 12-month period, and whether the timing requirements for updates to electronic and written disclosures versus those provided on retail packaging should be different. Additionally, under the current proposal, a financial institution would have to consider the cost of purchasing or activating the prepaid account as a fee when determining its incidence-based fee disclosure, but the Bureau is not otherwise mandating its disclosure in the short form disclosure.[268] The Bureau also seeks comment on whether the cost to purchase the account, as a one-time fee, should be excluded from the incidence-based fee disclosure or whether it should be mandated as part of the static portion of the short form. The Bureau also solicits comment on whether there are alternate approaches for disclosing key fees not captured by the standardized portion of the short form that recognize how products may vary and that would prevent evasion of the short form's requirements.

18(b)(2)(i)(B)(9) Overdraft Services and Other Credit Features

The Bureau is proposing that the short form disclosure would also have to include a statement indicating whether the prepaid account product could offer a credit feature to a consumer. Specifically, proposed § 1005.18(b)(2)(i)(B)(*9*) would require a statement on the short form that credit-related fees may apply, in a form substantially similar to proposed Model Form A–10(c), if, at any point, a credit plan that would be a credit card account under Regulation Z, 12 CFR part 1026 may be offered in connection with the prepaid account. Proposed § 1005.18(b)(2)(i)(B)(*9*) would also state that such a credit plan could be accessed by a credit card under Regulation Z, 12 CFR 1026.2(a)(15)(i), that also is an access device that accesses the prepaid account, or the credit plan could be accessed by an account number that is a credit card under Regulation Z, where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor offering the plan. Finally, proposed § 1005.18(b)(2)(i)(B)(*9*) would state that if neither of these two types of credit plans would be offered in connection with the prepaid account at any point, a financial institution would have to disclose on the short form a statement that no overdraft or credit-related fees

[268] The Bureau notes, however, that this fee, when applicable, would be listed in the long form disclosure pursuant to proposed § 1005.18(b)(2)(ii)(A).

would be charged, in a form substantially similar to proposed Model Form A–10(d) in Appendix A.

In the Bureau's consumer testing, many participants expressed a desire to avoid using any financial products that offer overdraft. Further, the 2014 Pew Survey indicates that many consumers turn to prepaid cards specifically to avoid incurring any overdraft charges.[269] The Bureau therefore believes that if a financial institution may offer a credit feature, then a consumer should be on notice of this possibility before acquiring the prepaid account. The Bureau believes that placing such notice on the short form would allow a consumer to decide whether they want to acquire a product that may offer credit, or whether they would prefer a product that would not offer credit, which, when applicable would also be disclosed in a statement on the short form disclosure. Without such a notice, the Bureau believes that consumers may not have adequate information to decide which prepaid product is best for them. The Bureau recognizes, however, that receiving notice about credit features on the short form disclosure might be confusing to consumers, since the Bureau is proposing to prohibit financial institutions from offering credit features to prepaid account holders until they have held an account for at least thirty days, and not all account holders would qualify for such credit features.[270] *See* proposed §§ 1005.18(g) and 1026.12(h). The Bureau, however, believes that the importance of alerting all consumers as to whether a prepaid account product could offer credit features outweighs any risk of confusion. The Bureau nevertheless seeks comment on all aspects of this part of the proposal, and, in particular, whether including notice of credit features on the short form disclosure is the proper approach.

Proposed comment (b)(2)(i)(B)(*9*)–1 would explain that the statement indicating whether a prepaid account product offers credit plans to a consumer would have to be provided on all short form disclosures, regardless of whether some consumers would be solicited to enroll in such a plan, if such a plan could be offered.

The Bureau solicits comment on all aspects of the requirement to include a statement on the availability of credit features, including whether such statements should be required to be disclosed on the short form, and what statements would be most helpful for consumers in deciding between products that offer credit features and those that do not.

18(b)(2)(i)(B)(10) Statement Regarding Other Fees

In addition to disclosure of specific fee types and a credit feature, the short form would also require, in proposed § 1005.18(b)(2)(i)(B)(*10*) disclosure of certain information regarding additional fees that a financial institution could impose on a prepaid account that are not captured in the short form. Specifically, proposed § 1005.18(b)(2)(i)(B)(*10*) would require financial institutions to include on the short form a statement regarding the number of fees other than those listed in the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*8*) that are listed on the long form disclosure pursuant to proposed § 1005.18(b)(2)(ii)(A), in a form substantially similar to the clause set forth in appendix A–10(a) through (d). The Bureau believes that because the short form may only include a subset of a prepaid account's fees, it would be important for consumers to understand when more fees might apply. As noted earlier, many participants in the Bureau's consumer testing reported finding out about fees only after they incur them. The Bureau believes that including a statement on the short form disclosure indicating exactly how many additional fees could apply to encourage consumers to seek out more information about a prepaid account before acquisition.

The Bureau recognizes, however, that this statement might suggest any other fees that apply are punitive when in fact such fees might be charged for services a consumer could find beneficial, and that might not be offered on competing cards. Nevertheless, the Bureau solicits comment on whether including this type of statement on the short form would be useful to consumers or if, instead, it might interfere with their ability to make an informed choice among prepaid accounts.

Unlike the incidence-based fees, the Bureau does not believe it is necessary to propose provisions about updating the statement regarding other fees. Pursuant to proposed § 1005.18(f), a financial institution would have to include the long form disclosure in the terms and conditions provided as part of a prepaid account's terms and conditions. Thus, any updates that are made to the fees disclosed in the long form would require an overhaul of all of the disclosures for a given prepaid account product, which the Bureau believes is unlikely to occur. The Bureau also seeks comment, however, on whether guidance around updating this statement is necessary.

Proposed comment 18(b)(2)(i)(B)(*10*)–1 would provide examples of how to comply with proposed § 1005.18(b)(2)(i)(B)(*10*). Specifically, the proposed comment would clarify that if a financial institution charges a fee for issuing a consumer a replacement card, but this fee is not among the top three fees its consumers incurred most frequently during the prior 12-month period and therefore would not be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*), and if this would be the only fee the financial institution would not be required to disclose elsewhere on the short form, then the financial institution would include a statement on the short form disclosure that it may charge one other fee not otherwise listed, in a form substantially similar to the language set forth in the Model Forms in proposed appendix A–10(a) through (d) of this part. The proposed comment would also provide an example that if a financial institution does not charge any fees other than those required to be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*8*), the financial institution may, but is not required to, include a statement on the short form disclosure that it does not charge any other fees not listed on the short form disclosure.

Proposed comment 18(b)(2)(i)(B)(*10*)–2 would provide guidance about how to count the total number of fees to disclose pursuant to proposed § 1005.18(b)(2)(i)(B)(*10*). Specifically, the proposed comment would clarify that if the fee a financial institution imposes might vary, even if the variation is based on a consumer's choice of how to utilize a particular service, the financial institution must count each variation of the fee that might be imposed as a separate fee. The proposed comment would further explain that for example, if a financial institution imposes one fee to issue a replacement card to the consumer using standard mail service, but charges a different (and perhaps higher) fee if the consumer requests expedited delivery of the replacement card, and neither of these fees are incurred frequently enough to be disclosed as an incidence-based fee pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*), then the financial institution would still count each of these fees separately when determining the total number of fees to disclose pursuant to proposed § 1005.18(b)(2)(i)(B)(*10*). Even if a fee

[269] 2014 Pew Study, at 1.

[270] For a more detailed discussion of the Bureau's approach to credit features offered on prepaid accounts, see the introduction to the TILA discussion.

could be waived under certain conditions, the proposed comment clarifies that it would still be counted to comply with proposed § 1005.18(b)(2)(i)(B)(*10*).

Nevertheless the Bureau seeks comment on whether this guidance is sufficient to enable compliance with § 1005.18(b)(2)(i)(B)(*10*). The Bureau also solicits comment on whether its proposed approach to addressing fee amount variations when counting the number of other fees could actually be misleading to the consumer.

18(b)(2)(i)(B)(11) Telephone Number and Web site

Proposed § 1005.18(b)(2)(i)(B)(*11*) would require disclosure, in a form substantially similar to the language set forth in the Model Forms in proposed appendix A–10(c) and (d), of a telephone number and the unique URL of a Web site that a consumer may enter to access the long form disclosure required under proposed § 1005.18(b)(2)(ii). Proposed § 1005.18(b)(2)(i)(B)(*11*) would also state that this disclosure would be required only when a financial institution chooses not to provide a written form of the disclosures required by proposed § 1005.18(b)(2)(ii) before a consumer acquires a prepaid account at a retail store as described in proposed § 1005.18(b)(1)(ii). The Bureau believes that using either of these methods, a consumer should be able to access information about the fees listed in the long form disclosure, and any conditions on the applicability of those fees, as described in the section-by-section analysis of proposed § 1005.18(b)(2)(ii)(A). As discussed above, the Bureau believes that if a consumer is not receiving the long form disclosure before acquisition in a retail store, it is important that they are still able to access the information. The Bureau also believes it is important that the URL of the Web site be unique to ensure that a consumer can directly access the same type of stand-alone long form that could be required to be provided pursuant to proposed § 1005.18(b)(1)(i) in written or electronic form before a consumer acquires a prepaid account.

Proposed comment 18(b)(2)(i)(B)(*11*)–1 would provide further details about the telephone number that would have to be included on the short form when a financial institution does not provide the long form disclosure before a consumer acquires a prepaid account. Specifically, proposed comment 18(b)(2)(i)(B)(*11*)–1 would state that a financial institution must make the long form disclosure described in proposed § 1005.18(b)(2)(ii) accessible to a consumer orally via a telephone number disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) when a financial institution chooses not to provide a written form of these disclosures before a consumer acquires a prepaid account, as described in proposed § 1005.18(b)(2)(i)(B)(*11*). The proposed comment would further clarify that for example, a financial institution could use a customer service agent or an interactive voice response system, to provide this disclosure. Proposed comment 18(b)(2)(i)(B)(*11*)–1 would also explain that a consumer must not incur a fee to call this telephone number before acquiring a prepaid account. The proposed comment would further clarify that the telephone number disclosed pursuant to § 1005.18(b)(2)(i)(B)(*11*) could be the same as the customer service number for which a financial institution impose a fee on a consumer to use for other purposes, but a consumer could not incur any customer service or other transaction fees when calling this number to access the information set forth in proposed § 1005.18(b)(2)(ii) before acquiring a prepaid account in retail store.

The Bureau considered requiring that this number be toll-free, but ultimately decided that having a toll-free number is less important to consumers, most of whom use mobile phones and do not incur additional fees for making long distance calls, and such a requirement could impose a burden on smaller prepaid account providers because they would perhaps have to maintain a separate toll-free line just for their prepaid account products. The Bureau notes that some card networks may require financial institutions to maintain toll-free lines, and therefore numbers disclosed in such cases will likely be toll-free.

Proposed comment 18(b)(2)(i)(B)(*11*)–2 would clarify that § 1005.18(b)(2)(i)(B)(*11*) requires disclosure of a unique URL that must take consumers to the Web page where disclosures described in § 1005.18(b)(2)(ii) may be viewed when a financial institution chooses not to provide a written form of those disclosures before a consumer acquires a prepaid account, as described in proposed § 1005.18(b)(1)(ii). The proposed comment would further clarify that an entered URL that requires a consumer to navigate various other Web pages before viewing the long form disclosure would not comply with proposed § 1005.18(b)(2)(i)(B)(*11*). The Bureau believes that consumers make acquisition decisions in retail stores relatively quickly—often while standing—and should not have to navigate different links to access the Web page that contains the long form disclosure. The Bureau has also considered requiring financial institutions to use shortened URLs on the short form disclosure provided in retail stores to decrease the amount of time required to access the long form disclosure. The Bureau seeks comment on whether such a requirement regarding the URL is necessary.

The Bureau also considered whether to propose to require financial institutions to disclose an SMS short code, which might be easier to type than a URL, that consumers could text to receive the URL that links directly to the long form disclosure.[271] The Bureau, however, decided against including this method for several reasons. First, sending a text message using an SMS short code would still require that consumers have a mobile phone that is capable of sending text messages and that a consumer receives adequate internet reception when in a retail store. Thus, the Bureau does not believe that an SMS short code would broaden the spectrum of consumers who could access the long form disclosure when in a retail store, and it could impose an additional cost on consumers who incur fees from their mobile carriers for receiving text messages. Further, the Bureau did not believe that an SMS short code would save a consumer who wants to access the long form disclosure an appreciable amount of time. The Bureau also believed that there could be security concerns involved with offering disclosures via SMS. The Bureau has also considered, but is not requiring, that a quick response (QR) code be included in the short form. Some Prepaid ANPR commenters suggested QR codes as another method for accessing information. Although potentially useful, a QR code would require a substantial amount of space on the small short form and, the Bureau believes, QR code adoption remains low.

The Bureau seeks comment on its proposal to disclose a telephone number and the unique URL of a Web site on the short form disclosure when the long form disclosure is not provided pre-acquisition in retail stores, and whether there are other methods the Bureau should consider disclosing on the short form. The Bureau also seeks comment on whether providing a SMS code or QR code on the short form would increase

[271] An SMS short code is a group of numbers one can send as a text message using a mobile phone and receive a text message in response.

the number of consumers who would be willing or able to access the long form disclosure pre-acquisition in a retail store.

18(b)(2)(i)(B)(12) Statement Regarding Registration

The Bureau is also proposing that a statement regarding the importance of registering the prepaid account with the financial institution be included on the short form disclosure. Specifically, proposed § 1005.18(b)(2)(i)(B)(*12*) would require a statement that communicates to a consumer that a prepaid account must be registered with a financial institution or service provider in order for the funds loaded onto the account to be protected, in a form substantially similar to the clause included on proposed Model Forms A–10(a) through (d).

As discussed in the section-by-section analysis of proposed § 1005.18(e)(3), registration typically means that a consumer provides identifying information such as name, address, date of birth, and Social Security Number or other government-issued identification number so that the financial institution can identify the cardholder and verify the cardholder's identity. The Bureau is proposing to add this statement because many consumer protections set forth in this proposal would not take effect until a consumer registers an account. For example, under proposed § 1005.18(e)(3), a consumer would not be entitled to error resolution rights or protection from unauthorized transactions until after registering the prepaid account. The Bureau believes that this is an important protection insofar as unregistered prepaid accounts are like cash—once lost, funds may be difficult or impossible to protect or replace because the financial institution may not know who is the rightful cardholder.

The Bureau, however, recognizes that in some acquisition scenarios, for example, government benefit accounts, payroll card accounts, or cards used to disburse financial aid to students, this type of statement might be less useful because consumers must register with the government agency, employer, or institution of higher education, in order to acquire the account. The Bureau therefore solicits comment on whether the short form disclosure provided to consumers pre-acquisition should always include this statement.

18(b)(2)(i)(B)(13) Statement Regarding FDIC (or NCUSIF) Insurance

The Bureau is proposing to address pass-through deposit (and share) insurance in proposed § 1005.18(b)(2)(i)(B)(*13*). As discussed above, the FDIC, among other things, protects funds placed by depositors in insured banks and savings associations; the NCUA provides a similar role for funds places in credit unions. As explained in the FDIC's 2008 General Counsel Opinion No. 8, the FDIC's deposit insurance coverage will ''pass through'' the custodian to the actual underlying owners of the deposits in the event of failure of an insured institution, provided certain specific criteria are met.[272]

In response to the Prepaid ANPR, many consumer advocacy group commenters suggested that the Bureau require that pass-through deposit (or share) insurance cover all funds loaded into prepaid accounts, while many industry group commenters suggested that the Bureau propose clear disclosure of whether a prepaid product carries FDIC insurance or not.

The Bureau believes it is not always easy to determine or explain whether FDIC or NCUSIF pass-through deposit or share insurance would apply to a particular prepaid account. Thus, as is discussed below, the Bureau is proposing disclosure be made regarding FDIC or NCUSIF insurance in only limited situations. In the Bureau's Study of Prepaid Account Agreements, the Bureau found that 65.85 percent of all account agreements reviewed stated that cardholder funds were protected by FDIC deposit (or NCUSIF share) insurance (this includes agreements that explained insurance coverage depends on card registration and/or that it only applies to funds held by a bank or credit union in a pooled account associated with the program). Of the remaining agreements, 17.23 percent implied that the program was FDIC or NCUSIF insured by stating that the issuer is an FDIC or NCUSIF-insured institution, but that did not address FDIC or NCUSIF insurance coverage for the program. A small number of agreements, 6.15 percent of those reviewed, did not address FDIC or NCUSIF insurance coverage for the program. For the latter two categories of programs, it is possible that such programs are in fact set up to be eligible for pass-through deposit (or share) insurance, but it was not possible to tell from reviewing the program's account agreement. Finally, 10.77 percent of agreements explicitly stated that the program was not insured.[273]

In its consumer testing, the Bureau observed that some participants misunderstood the scope of the protections FDIC pass-through deposit insurance actually provides for prepaid accounts. During the consumer focus groups, for example, participants were asked if they had heard of FDIC deposit insurance and how it related to their GPR cards. Nearly all participants said they had heard of FDIC deposit insurance, and many consumers believed the funds on their GPR cards were FDIC-insured.[274] When consumers were asked to explain what it meant that their GPR card had FDIC deposit insurance, most made vague references to their funds being ''protected.'' Upon further probing, however, the majority of participants incorrectly thought FDIC deposit insurance would protect their funds in the event of fraudulent charges or a stolen card.[275] A few believed a problem of that nature would be resolved faster if the prepaid card had FDIC deposit insurance than if it did not. Some participants stated that FDIC insured money in banks; they reasoned that because their card was most likely connected to a bank, the money on their cards was therefore protected from fraud by the FDIC, although others disagreed. Very few participants understood FDIC insurance correctly in that it applies to the insolvency of the bank that holds the underlying funds and not to the funds on a prepaid card itself in the case of an unauthorized transaction on the account.

In light of the results of the Bureau's Study of Prepaid Account Agreements indicating that many products meeting the proposed definition of prepaid account already provide pass-through deposit insurance coverage and consumers' misunderstandings about what protections pass-through deposit insurance actually affords, the Bureau has decided not to propose any requirements related to the affirmative existence of pass-through deposit insurance. The Bureau is proposing, however, that financial institutions would have to disclose a statement on the short form if a prepaid account is

[272] 73 FR 67155, 67157 (Nov. 13, 2008).

[273] *See* Study of Prepaid Account Agreements, at 27–28 and tbl. 13. In addition, the Bureau has observed that some GPR card providers disclose the existence of pass-through deposit insurance coverage or that the issuing bank is an FDIC-insured institution on their retail packaging, often quite prominently. The Bureau's Study of Prepaid Account Agreements, however, did not examine pass-through insurance statements made on GPR cards' retail packaging. Likewise, the Study did not examine pass-through insurance statements made on prepaid programs' other marketing materials or on their Web sites. *See id.*

[274] *See* ICF Report, at 10.

[275] The Bureau notes, however, that despite believing that FDIC insurance could ''protect'' funds held in a prepaid account, no testing participants mentioned FDIC insurance when asked to interpret the statement ''Register your card to protect your money,'' which would be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*12*). *See* ICF Report, at 5.

not set up to be eligible for FDIC (or NCUSIF) pass-through deposit (or share) insurance. Specifically, proposed § 1005.18(b)(2)(i)(B)(*13*) would require that if a prepaid account product is not set up to be eligible for FDIC deposit or NCUSIF share insurance, a financial institution would have to include a statement on the short form disclosure that FDIC deposit insurance or NCUSIF share insurance, as appropriate, does not protect funds loaded into the prepaid account, in a form substantially similar to the clause set forth in Model Forms A–10(c) and (d).

The Bureau seeks comment on all aspects of this part of the proposal. Specifically, the Bureau solicits comment on whether the existence—or lack thereof—of pass-through deposit (or share) insurance should be disclosed on retail packaging, online disclosures, or in any other medium, as many consumer advocacy group comments to the Prepaid ANPR suggested. The Bureau has also observed that financial institutions currently use varied language to describe FDIC (or NCUSIF) insurance. The Bureau therefore solicits comment on whether specific language should be used to describe pass-through deposit (or share) insurance, and if so, what that language should be. The Bureau also solicits comment on whether there is a simple way that this, and other conditions on the applicability FDIC pass-through insurance described above, can be disclosed, particularly in retail stores given the limited space available on card packaging material. Finally, the Bureau solicits comment on whether non-banks that issue prepaid accounts could apply the proposed statement regarding FDIC or NCUSIF insurance to their products, or whether the Bureau should propose an alternative requirement regarding the disclosure of the availability of FDIC or NCUSIF insurance for non-banks that issue prepaid accounts.

18(b)(2)(i)(B)(14) CFPB Web Site

Proposed § 1005.18(b)(2)(i)(B)(*14*) would require disclosure of the URL of the Web site of the Consumer Financial Protection Bureau in a form that is substantially similar to the clauses set forth in appendix A–10(a) of this part. The Bureau intends to develop resources on its Web site that would, among other things, provide basic information to consumers about prepaid accounts, the benefits and risks of using them, how to use the proposed disclosures, and a URL to the Bureau's complaint portal for prepaid products.

18(b)(2)(i)(C) Disclosing Variable Fees

Proposed § 1005.18(b)(2)(i)(C) would set forth how, within the confines of the proposed short form disclosure, financial institutions could disclose fees that may vary. As noted above, in many instances, prepaid accounts may have certain fees that vary depending on how a consumer uses the account. For example, monthly periodic fees are, for some prepaid account products, waived when a consumer receives direct deposit or when the monthly balance exceeds a certain amount. In some instances, these conditional situations could become complicated and difficult to explain on a short form disclosure, particularly for multiple fees. The Bureau believes that allowing multiple, complex disclaimers on a single form would be complicated and make comprehension and comparisons more difficult.

Thus, the Bureau is proposing § 1005.18(b)(2)(i)(C), which would provide that if the amount of the fee that a financial institution imposes for each of the fee types disclosed pursuant to proposed § 1005.18(b)(2)(i)(B) could vary, a financial institution would have to disclose the highest fee it could impose on a consumer for utilizing the service associated with the fee, along with a symbol, such as an asterisk, to indicate that a lower fee might apply, and include text explaining that the fee could be lower, in a form substantially similar to the clause set forth in the Model Forms A–10(a) through (d) in appendix A. Proposed § 1005.18(b)(2)(i)(C) would also state that a financial institution would have to use the same symbol and text for all fees that could be lower, but could use any other part of the prepaid account product's packaging material or Web site to provide more detail about how a specific fee type may be lower. Proposed § 1005.18(b)(2)(i)(C) would further state that a financial institution must not disclose any third party fees imposed in connection with any of the fees disclosed pursuant to § 1005.18(b)(2)(i)(B)(*1*) through (*8*). To the extent third party fees apply or fees could be lower, the Bureau is not proposing to allow that information to be conveyed on the short form beyond allowing the financial institution to use a symbol to indicate when this is the case.

Proposed comment 18(b)(2)(i)(C)–1 would provide examples of how to disclose variable fees on the short form in compliance with proposed § 1005.18(b)(2)(i)(C). Specifically, the proposed comment would explain that, for example, if a financial institution charges a monthly fee of $4.95, but the financial institution waives this fee if a consumer receives direct deposit payments into the prepaid account, the financial institution would list a monthly fee of $4.95 on the short form disclosure with an asterisk (or other symbol) next to the dollar amount that refers to a statement that explains the fee may be lower. The proposed comment would also clarify that another example might be if a financial institution charges a cash reload fee of $3.95 at reload networks that are not agents of the financial institution but would waive this fee if a consumer loads money at a point-of-sale terminal operated by a retailer that is an agent of the financial institution. In this example, the financial institution would disclose a cash reload fee of $3.95 on the short form disclosure pursuant to proposed § 1005.18(b)(2)(i)(C) with an asterisk (or other symbol) next to the dollar amount that refers to the same statement that the fee may be lower. The proposed comment would further clarify that proposed § 1005.18(b)(2)(i)(C) does not permit a financial institution explain the conditions under which a fee may be lower, but a financial institution could use any other part of the prepaid account product's packaging material or may use its Web site to disclose that information, and that information would also be required to be disclosed pursuant to proposed § 1005.18(b)(2)(ii)(A). Proposed comment 18(b)(2)(i)(C)–2 would explain that third parties could include service providers and other entities, regardless of whether the entity is an agent of the financial institution. The Bureau believes that regardless of whether a third party has a relationship with the financial institution, no additional fees should be disclosed on the short form.

The Bureau recognizes that its proposed approach to the disclosure of variable fees on the short form could potentially obscure some complexity in a prepaid account's fee structure. The Bureau, however, proposes to require that this information be disclosed on the long form (*see* proposed § 1005.18(b)(2)(ii)(A)) and to permit its disclosure outside the confines of the short form to mitigate any risk of confusion. *See* comment 18(b)(2)(i)(C)–1. Thus, the Bureau believes that its proposed short form disclosure—and the requirement to disclose the highest fee with an indication that the fee may be lower in certain circumstances—would allow consumers to know the maximum they will pay for that fee type while indicating to consumers when

they could qualify for a lower fee. The Bureau, however, recognizes the compromises it has made, and it seeks comment on whether there are other ways that variability should be addressed. The Bureau also solicits feedback on whether it should mandate or permit the disclosure of third party fees on the short form. Also, the Bureau seeks comment on whether financial institutions should be allowed to use more than one type of symbol to explain variability of fees listed in the short form. Additionally, the Bureau also seeks comment on whether a de minimis exception should be allowed that would permit financial institutions to disclose a different fee if it is close in value to the highest fee.

18(b)(2)(ii) Long Form Content Requirements

In addition to the short form, the proposed rule would require financial institutions to provide a long form disclosure pre-acquisition. Pursuant to proposed § 1005.18(b)(3)(iii)(A), in most cases, the contents of the long form disclosure discussed below would have to be in a form substantially similar to proposed Sample Form A–10(e).

18(b)(2)(ii)(A) Fees

Proposed § 1005.18(b)(2)(ii)(A) would require the disclosure in the long form of all fees that may be imposed by the financial institution in connection with a prepaid account. For each fee type, the financial institution would have to disclose the amount of the fee, the conditions, if any, under which the fee may be imposed, waived, or reduced, including, to the extent known, any third party fee amounts that may apply. Proposed § 1005.18(b)(2)(ii)(A) would also require that if such third party fees may apply but the amount of those fees are not known, a financial institution would have to instead include a statement indicating that third party fees may apply without specifying the fee amount, and that a fee imposed by a third party who acts as an agent of the financial institution for purposes of the prepaid account would always be disclosed.

As noted above, this part of the proposal is authorized under EFTA sections 904(a) and (c), 905(a), and Dodd-Frank Act sections 1032(a). The Bureau believes that pre-acquisition disclosures of all fees for prepaid accounts will, consistent with EFTA section 902 and Dodd-Frank section 1032(a), assist consumers' understanding of the terms and conditions of their prepaid accounts, and ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account. The Bureau believes that this disclosure would, in many ways, be similar to what many financial institutions disclose today regarding prepaid accounts' fee structures in the terms and condition documents, but the content of the long form in proposed § 1005.18(b)(2)(ii)(A) would be provided to a consumer as a stand-alone document before a consumer acquires a prepaid account.[276]

Proposed § 1005.18(b)(2)(ii)(A) would also state that a financial institution could not utilize any symbols, such as asterisks, to explain the conditions under which any fee may be imposed. The Bureau believes it is important that consumers can easily follow the information in the long form, and that, when financial institutions do not face space constraints like on the short form, text should be used to explain any information about fees, instead of relying on a consumer first to notice symbols and then associate them with text in a footnote, for example. *See* proposed comment 18(b)(2)(ii)(A)–2.

The Bureau also proposes to add commentary to explain the format of the long form disclosure. Specifically, proposed comment 18(b)(2)(ii)(A)–1 would explain that for example, if a financial institution charges a cash reload fee, the financial institution must list the amount of the cash reload fee and also specify any circumstances under which a consumer could qualify for a lower fee. The proposed comment would further explain that relevant conditions to disclose in the long form disclosure could also include, for example, if there is a limit on the amount of cash a consumer may load into the prepaid account in a transaction or during a particular time period. Proposed comment 18(b)(2)(ii)(A)–2, would explain that a financial institution may, at its option, choose to disclose pursuant to proposed § 1005.18(b)(2)(ii)(A), any service or feature it provides or offers even if it does not charge a fee for that service or feature.

The proposed comment would clarify that, for example, a financial institution may choose to list ''online bill pay service'' and indicate that the fee is ''$0'' or ''free'' when the financial institution does not charge consumers a fee for that service or feature. Proposed comment 18(b)(2)(ii)(A)–2 would further clarify that by contrast, where a service or feature is available without a fee for an introductory period, but where a fee may be imposed at the conclusion of the introductory period for that service or feature, the financial institution could not indicate that the fee is ''$0.'' The proposed comment would clarify that the financial institution would instead have to list the main fee and explain in the separate explanatory column how the fee could be lower during the introductory period, what that alternative fee would be, and when it will be imposed. The proposed comment would provide further guidance that similarly, if a consumer would have to enroll in an additional service to avoid incurring a fee for another service, neither of those services would disclose a charge of, ''$0,'' but, instead, would list each fee amount imposed if the consumer does not enroll. The proposed comment would also provide an example that if the monthly fee is waived once a consumer receives direct deposit payments into the prepaid account, the monthly fee imposed upon a consumer if they do not receive direct deposit would be disclosed in the long form, and an explanation regarding how receiving direct deposit might lower the fee would have to be included in the explanatory column in the long form. A financial institution's ability to disclose any fees of its choosing in the long form disclosure (as long as the fee amounts disclosed are accurate) is different from the disclosures required on the short form (*see* proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*) and proposed comment 18(b)(2)(i)–1), which must always be included, even when inapplicable to a particular prepaid account product, and a financial institution cannot choose to disclose more fee information than what is required.

Proposed comment 18(b)(2)(ii)(A)–3 would provide guidance on the disclosure of third party fees in the long form disclosure. Specifically, the proposed comment would explain that proposed § 1005.18(b)(2)(ii)(A) generally requires the disclosure, to the extent known, of any third party fee amounts that may apply. Proposed comment 18(b)(2)(ii)(A)–3 would further explain that, for example, a financial institution that offers balance updates to a consumer via text message would disclose that mobile phone carrier data charges could apply for each text message a consumer receives. The

[276] Pursuant to existing § 1005.7(b)(5), as modified by proposed § 1005.18(f), a version of the long form must also be provided in the terms and conditions for prepaid accounts at the time the consumer contracts for an electronic funds transfer or before the first electronic funds transfer is made involving the consumer's account. *See* section-by-section analysis of proposed § 1005.18(f).

proposed comment would also clarify that proposed § 1005.18(b)(2)(ii)(A) requires that a financial institution must always disclose in the long form any fees imposed by a third party who is acting as an agent of the financial institution for purposes of the prepaid account product. The proposed comment would also provide an example that any fees that the provider of a cash reload service who has a relationship with the financial institution may impose would be disclosed in the long form.

18(b)(2)(ii)(B) Overdraft Services and Other Credit Features

Proposed § 1005.18(b)(2)(ii)(B) would require the financial institution to include in the long form the disclosures described in § 1026.60(a), (b) and (c) of Regulation Z (12 CFR part 1026) if at any point, a credit plan that would be a credit card account under Regulation Z, 12 CFR part 1026 may be offered in connection with the prepaid account. Proposed § 1005.18(b)(2)(ii)(B) would further state that such a credit plan could be accessed by a credit card under Regulation Z, 12 CFR 1026.2(a)(15)(i), that also is an access device that accesses the prepaid account, or a credit plan could be accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor offering the plan.

The Bureau recognizes that Regulation Z does not require these disclosures to be provided until a consumer is actually solicited for the credit plan. The Bureau, however, believes it is important for consumers who are considering whether to acquire a prepaid account to know not only if a credit plan could be offered at any point, as required to be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*9*), but also what the possible cost of such a plan might be. Because of the space constraints on the short form, as discussed above, the Bureau believes it is appropriate for a consumer to receive as part of the long form disclosure more complete information about any credit plan that could be offered to them, even if they would not be solicited for such a plan until at least thirty days after registering a particular prepaid account. *See* proposed § 1005.18(g) and 1026.12(h).

Proposed comment 18(b)(2)(ii)(B)–1 would clarify that the disclosures described in § 1026.60(a), (b) and (c) of Regulation Z (12 CFR part 1026) would have to appear in the form required under 12 CFR 1026.60(a), (b) and (c), and, to the extent possible, on the same printed page or Web page as the rest of the information required to be listed pursuant to proposed § 1005.18(b)(2)(ii). The Bureau recognizes that depending on the number of fees included in the long form disclosure, it might not be possible to include both disclosures on the same printed page. The Bureau believes, however, that to the extent it would be possible to include these disclosures on the same printed page or Web page, doing so would make it easier for the consumer to review the disclosures.

18(b)(2)(ii)(C) Telephone Number, Web Site and Mailing Address

Proposed § 1005.18(b)(2)(ii)(C) would require disclosure of the name, telephone number, Web site, and mailing address of the person or office that a consumer could contact to learn about the terms and conditions of the prepaid account, to obtain prepaid account balance information, to request a written copy of transaction history pursuant to proposed § 1005.18(c)(1)(iii) if the financial institution does not provide a periodic statement pursuant to existing § 1005.9(b) or to notify the person or office when a consumer believes that an unauthorized electronic fund transfer has occurred as required by existing § 1005.7(b)(2) or proposed § 1005.18(d)(1)(ii).

18(b)(2)(ii)(D) Statement Regarding FDIC (or NCUSIF) Insurance

Proposed § 1005.18(b)(2)(ii)(D) would require that the long form also include the disclosure required under proposed § 1005.18(b)(2)(i)(B)(*13*) regarding FDIC (or NCUSIF), pass-through deposit (or share) insurance, when appropriate. This statement would be the same as the statement included on the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*13*). For more details, *see* section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*13*).

18(b)(2)(ii)(E) CFPB Web Site and Telephone Number

Proposed § 1005.18(b)(2)(ii)(D) would require disclosure of the URL of the Web site of the Consumer Financial Protection Bureau, and a telephone number a consumer could contact and the URL a consumer could visit to submit a complaint related to a prepaid account. As discussed in the section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*14*), the Bureau intends to develop resources on its Web site that would, among other things, provide basic information to consumers about prepaid accounts, the benefits and risks of using them, and how to use the proposed disclosures. The Bureau also believes that consumers would benefit from seeing the Consumer Financial Protection Bureau's Web site and telephone number that they can use to submit a complaint about a prepaid account.

The Bureau seeks comment on all aspects of the proposed contents of the long form disclosure. In particular, the Bureau seeks comment on whether it should propose more specific content requirements for the long form disclosure, or whether some of the information the Bureau proposes to include on the long form is unnecessary.

18(b)(3) Form of Pre-Acquisition Disclosures

Proposed § 1005.18(b)(3) would set forth the requirements for how the short form and long form disclosures must be presented. Specifically, proposed § 1005.18(b)(3)(i) sets forth general requirements for written, electronic, and oral disclosures. Proposed § 1005.18(b)(3)(ii) would provide requirements regarding whether these disclosures would have to be in a retainable form. Proposed § 1005.18(b)(3)(iii) would set forth parameters for the tabular form in which the disclosures would have to be presented, including specific requirements for short forms presenting multiple service plans.

18(b)(3)(i) General

Except when such disclosures are provided electronically or orally, as described in proposed § 1005.18(b)(3)(iii)(B) and (C), proposed § 1005.18(b)(3)(i)(A) would provide that short form and long form disclosures required by proposed § 1005.18(b)(2)(i) and (ii) generally must be disclosed in writing. The Bureau believes that consumers can best review the terms of a prepaid account before acquisition when seeing these disclosures in written form. As is discussed above, however, the Bureau recognizes that in certain situations it is not practicable to provide written disclosures. For example, when a consumer acquires a prepaid account on the internet, the Bureau believes that a financial institution cannot easily provide written (non-electronic) disclosures to a consumer pre-acquisition.

Currently, Regulation E permits disclosures to be provided in electronic form, subject to compliance with consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C 7001, *et seq.*). § 1005.4(a)(1). The E-Sign Act generally allows the use of electronic records to

satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if a consumer has affirmatively consented to such use and has not withdrawn such consent, and if certain format of delivery requirements are met. Before receiving such consent, the E-Sign Act requires that financial institutions make clear to a consumer that they have the option of receiving records in paper form, to specify whether a consumer's consent applies to a specific transaction or throughout the duration of their relationship with the financial institution, and to inform a consumer of how he or she might withdraw consent and update information needed to contact them electronically, among other requirements. The E-Sign Act also requires financial institutions to retain record of any disclosures that have been provided to a consumer electronically so that a consumer can access them later.

When the Bureau issued regulations on remittance transfers, the Bureau altered Regulation E's general requirement for remittance that provides electronic disclosures are permissible as long as they comply with the E-Sign Act. The Bureau mandated that certain disclosures could be provided electronically, in retainable form, without having to comply with the E-Sign Act if the sender electronically requests the remittance transfer provider to send the remittance transfer. *See* § 1005.31(a)(2).

The Bureau is proposing to modify the general Regulation E electronic disclosure requirement for prepaid accounts in proposed § 1005.18(b)(3)(i)(B), which would require that a financial institution would have to provide the short form and long form disclosure required by proposed § 1005.18(b)(2)(i) and (ii) in electronic form when a consumer acquires a prepaid account through the Internet, including via a mobile application. Proposed § 1005.18(b)(3)(i)(B) would also state that disclosures required by proposed § 1005.18(b)(2)(i) and (ii) would have to be provided electronically in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. In addition, proposed § 1005.18(b)(3)(i)(B) would provide that the electronic disclosures required by § 1005.18(b)(2)(i) and (ii) would not need to meet the consumer consent and other applicable provisions of the E-Sign Act.

As in the remittances pre-purchase disclosure context, the Bureau believes altering the general Regulation E requirement for prepaid accounts is necessary to ensure consumers that receive relevant disclosure information at the appropriate time. The Bureau believes that during the pre-acquisition time period for prepaid accounts it is important for consumers who decide to go online to acquire a prepaid account to see the relevant disclosures for that prepaid account product in electronic form. The Bureau believes that consumers will often decide whether to acquire a particular prepaid account after doing significant research online, and that if they are not able to see disclosures on the products' Web sites, they cannot make an informed acquisition decision. As discussed above, Regulation E's current general E-Sign provision allows financial institutions to provide disclosures electronically at their discretion;[277] however, the Bureau believes that, for Internet acquisitions of prepaid products, a mandate of electronic disclosures on Web sites is more appropriate.

The general Regulation E E-Sign provision also requires that financial institutions comply with E-Sign consent provisions when providing disclosures electronically. The Bureau is not proposing to require such compliance for prepaid accounts that are acquired through the Internet. Instead, the Bureau is proposing § 1005.18(b)(3)(i)(B), which would state that electronic disclosures of the short form and long forms for prepaid accounts acquired through the Internet would only have to be provided electronically in a manner which is reasonably expected to be accessible in light of how a consumer acquired the prepaid account. For example, if a consumer has acquired a prepaid account through a Web site, it is reasonable to expect that a consumer would be able to view electronic disclosures on a Web site and no E-Sign consent would be necessary. The Bureau notes, however, that this alternative E-Sign requirement applies only to the pre-acquisition disclosure of the short form and long form disclosures for prepaid accounts acquired over the Internet and does not alter the application of the general E-Sign provision in Regulation E to prepaid account after acquisition, or for any other type of account.

The Bureau also proposes to add comment 18(b)(3)(i)(B)–1 which would explain how to disclose the short and long forms electronically. Specifically, the proposed comment would explain that a financial institution may, at its option, provide the short and long form disclosures on the same Web page or two different Web pages as long as the disclosures are provided in accordance with the pre-acquisition disclosure requirements in proposed § 1005.18(b)(1)(i). The Bureau recognizes, as several consumer advocacy group commenters to the Prepaid ANPR stated, that disclosures provided electronically on Web sites may be difficult for consumers to find because they are sometimes buried several pages deep or require some form of registration or logging on to access. To mitigate the risk of consumers having trouble locating electronic disclosures on a Web site, the Bureau generally believes that disclosures provided on a Web site should be easy to locate, whether they are provided on the same Web page, or on two separate pages. *See* proposed comment 18(b)(1)–2.

Proposed comment 18(b)(3)(i)(B)–2 would provide guidance around the lack of an E-sign requirement for prepaid account pre-acquisition disclosures. Specifically, the proposed comment would clarify that if, for example, a consumer is acquiring a prepaid account using a financial institution's Web site, it would be reasonable to expect that a consumer would be able to access pre-acquisition disclosures provided on a similar Web site.

Proposed § 1005.18(b)(3)(i)(B) would also require that disclosures provided to a consumer through a Web site as described in proposed § 1005.18 (b)(2)(i)(B)(*11*) would have to be made in an electronic form using machine-readable text that is accessible via both Web browsers and screen readers. Proposed comment 18(b)(3)(i)(B)–3 would clarify that a disclosure would not comply with this requirement if it was not provided in a textual format that can be read automatically by an Internet search engines or other computer systems. This textual format could include, for example, JSON, XML, or a similar format.

18(b)(3)(i)(C) Oral Disclosures

The Bureau is also proposing § 1005.18(b)(3)(i)(C), which would state that disclosures required by proposed § 1005.18(b)(2)(i) would have to be provided orally when a consumer acquires a prepaid account orally by telephone as described in proposed § 1005.18(b)(3)(iii). Proposed § 1005.18(b)(3)(i)(C) would also state that disclosures provided to a consumer through the telephone number described in proposed § 1005.18(b)(2)(i)(B)(*11*) also would have to be made orally. The Bureau believes that when a consumer acquires a

[277] *See* § 1005.4(a)(1).

prepaid account orally by telephone or when a consumer requests to hear the long form disclosure in a retail store by calling the telephone number disclosed on the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*), it is not practicable for a financial institution to provide these disclosures in written form and therefore oral disclosures could be provided.

18(b)(3)(ii) Retainable Form

Proposed § 1005.18(b)(3)(ii) would require that disclosures required by proposed § 1005.18(b)(2)(i) and (ii) be provided in a retainable form except for disclosures provided to a consumer through the telephone number described in proposed § 1005.18(b)(2)(i)(B)(*11*) or disclosure provided orally pursuant to proposed § 1005.18(b)(1)(iii). The Bureau notes, however, that Regulation E does have general recordkeeping requirements. *See* § 1005.13(b). After having acquired a prepaid account orally, a consumer would receive the long form disclosure in the full terms and conditions accompanying the prepaid account inside its packaging. *See* proposed § 1005.18(f). Further, the long form disclosure would also presumably be available on the financial institution's Web site as part of the full prepaid account agreement that would be required to be posted pursuant to proposed § 1005.19, discussed below, should a consumer want to review it post-acquisition. Thus, the Bureau does not believe it is necessary for the disclosures provided to a consumer for a prepaid account acquired orally by telephone or the long form disclosure that a consumer may access by telephone pre-acquisition in a retail store to be retainable, and the Bureau does not believe it is practicable to provide retainable forms of oral disclosures. The Bureau does, however, believe that providing a retainable format of written and electronic disclosures is feasible in all other contexts. Proposed comment 18(b)(3)(ii)–1 would explain that a financial institution may satisfy the requirement to provide electronic disclosures in a retainable form if it provides disclosures on its Web site in a format that would be capable of being printed, saved or emailed to a consumer.

18(b)(3)(iii) Tabular Format

18(b)(3)(iii)(A) General

The Bureau is also proposing, in proposed § 1005.18(b)(3)(iii)(A), tabular form requirements that would be used to present the short and long form disclosures. Currently, the Bureau believes that most financial institutions use some sort of table format to disclose prepaid account fees in their terms and conditions documents, although each institution selects different fees to highlight and presents them in different orders. Financial institutions also implement a variety of formats to present fee information on packaging material in retail stores. Thus, the burden is on consumers to identify the fees that are most important to them in the various tabular formats to determine the best product for their needs.

During consumer testing, however, the Bureau found that few participants researched prepaid accounts before acquisition, particularly in retail stores. The Bureau believes that at least part of the reason that consumers do not do much comparison shopping is that doing so is not straightforward. In a retail store, prepaid accounts are often displayed behind counters, close to check-out lanes at ends of aisles and in other areas that can often be crowded or difficult to access, which can limit careful review of a product's terms. The Bureau believes that financial institutions are more likely to present fee information in a clearer and more complete format for prepaid account products offered online, but, as mentioned above, the format used to display this information varies, making comparisons harder. Although some variation is inevitable because each financial institution offers different services in connection with its prepaid accounts, the Bureau nevertheless believes that requiring use of a standardized form to disclose fee information can minimize some variation by maintaining a consistent format and, in the case of the short form, also keeping many of the fee types that are listed constant.

The Bureau therefore is proposing that, except as provided in proposed § 1005.18(b)(3)(iii)(B), short form disclosures required by proposed § 1005.18(b)(2)(i) that are provided in writing or electronically shall be in the form of a table substantially similar to proposed Model Forms A–10(a) through (d), as applicable. Long form disclosures required by proposed § 1005.18(b)(2)(ii)(A) through (E) that are provided in writing or electronically would have to be in a form of a table substantially similar to proposed Sample Form A–10(e).[278] The Bureau is proposing a sample form for the long form disclosure instead of a model form, as is proposed for the short form disclosure, because the Bureau believes the long form disclosures could vary depending on the number of fees included in the form and the extent of relevant conditions that would have to be disclosed in connection with each fee. Nevertheless the Bureau solicits comment on whether it should provide a model form for the long form disclosure.

18(b)(3)(iii)(B) Disclosures for Prepaid Account Products Offering Multiple Service Plans

As an exception to proposed § 1005.18(b)(3)(iii)(A) (which applies to products with a single fee schedule), proposed § 1005.18(b)(3)(iii)(B) would set forth tabular form requirements for prepaid products offering multiple service plans. Specifically, proposed § 1005.18(b)(3)(iii)(B)(*1*) would state that when a financial institution offers multiple service plans for a particular prepaid account product and each plan has a different fee schedule, the information required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*) could be provided for each service plan in the form of a table substantially similar to the proposed Model Form A–10(f), and must include descriptions of each service plan included in the table using the terms, ''Pay-as-you-go plan,'' ''Monthly plan,'' ''Annual plan,'' or substantially similar terms. Proposed § 1005.18(b)(3)(iii)(B)(*1*) would further state when disclosing multiple service plans on one short form, the information required by proposed § 1005.18(b)(2)(i)(B)(*8*) must only be disclosed once in the table. Alternatively, proposed § 1005.18(b)(3)(iii)(B)(*1*) would permit a financial institution to disclose just the information required by proposed § 1005.18(b)(2)(i) for only the service plan in which a consumer is enrolled automatically by default upon acquiring the prepaid account, in the form of a table substantially similar to proposed Model Form A–10(c) or (d). Finally, proposed § 1005.18(b)(3)(iii)(B)(*1*) would state that regardless of whether a financial institution discloses all service plans on one form or chooses only to disclose the service plan in which a consumer is automatically enrolled by default, the disclosures required by proposed § 1005.18(b)(2)(i)(B)(*9*) through (*14*) would only have to be disclosed once.

As discussed above, the Bureau believes that it is important for short and long form disclosures to have a standardized format in order to facilitate consumers' comparison of multiple

[278] The Bureau notes that the explanatory text used in the model long form disclosure is meant only to serve as an example, as the Bureau is proposing only formatting requirements for the long form disclosure, and not specific language.

products and their ability to understand key fee and service information about a prepaid product. The Bureau also recognizes, however, that financial institutions offering multiple service plans on one prepaid account need flexibility to disclose information about multiple plans to a consumer. The Bureau therefore is proposing that financial institutions may use one short form table that discloses the information required by proposed § 1005.18(b)(2)(i) for each of the service plans to highlight for a consumer that such plans exist. At its option, a financial institution could also choose to only disclose the service plan in which a consumer is enrolled upon acquiring the prepaid account using the tabular format described in proposed § 1005.18(b)(3)(iii)(A) and note elsewhere on the packaging material or on its Web site the other service plans it offers. The Bureau believes that these options will give financial institutions the flexibility to accommodate disclosure of multiple service plans, while also maintaining the simplicity of the short and long form table designs to facilitate consumers' comparison shopping. In consumer testing, some participants were confused by short forms that included multiple service plans similar to the one proposed in Model Form A–10(f). The Bureau therefore also considered proposing that financial institutions must disclose each service plan in a separate short form table instead of allowing financial institutions to disclose all of the plans on one short form. Some testing participants also were unsure of which service plan applied upon purchase when seeing multiple service plans on one short form, an issue that the Bureau believes may be resolved if a financial institution only discloses the fee schedule for the plan that applies upon a consumer's acquisition of the account. The Bureau thus seeks comment on the best way to accommodate prepaid accounts products offering multiple service plans on the short form disclosure while providing accurate and sufficient information to consumers.

The Bureau also acknowledges that only disclosing the service plan in which a consumer is automatically enrolled by default upon acquiring the prepaid account could potentially conflict with the Bureau's proposed requirement in proposed § 1005.18(b)(2)(i)(C) that financial institutions would have to disclose the most expensive fee for each fee type required to be disclosed in the short form. For example, a ''pay-as-you-go'' plan in which a consumer is enrolled upon acquisition might not impose a periodic fee, and thus, could disclose ''$0'' in the top-line of the short form where the periodic fee disclosure would be required. Under such a plan, if a consumer were to opt into a monthly plan, however, they could be charged a periodic fee higher than $0. The Bureau therefore also seeks comment on whether the disclosure of only the default plan on the short form would be clear or if the Bureau should require that financial institutions always disclose multiple service plans on the short form.

Proposed § 1005.18(b)(3)(iii)(B)(*2*) would state that the information required to be disclosed in the long form by proposed § 1005.18(b)(2)(ii) must be presented for all service plans in the form of a table substantially similar to proposed Sample Form A–10(g). The Bureau believes the long form disclosure should include all fee information about a prepaid account product, and therefore it should contain the fee schedule for every possible service plan.

Additionally, the Bureau proposes to add comment 18(b)(3)(iii)(B)–1 which would provide additional guidance on its proposed definition of multiple service plans. Specifically, proposed comment 18(b)(3)(iii)(B) would state that the multiple service plan disclosure provisions in proposed § 1005.18(b)(3)(iii)(B) apply when a financial institution offers more than one service plan for a particular prepaid account product, and each plan has a different fee schedule. For example, a financial institution might offer a prepaid account product with one service plan where a consumer pays no periodic fee but instead pays a fee for each transaction, and another plan that includes a monthly fee but no per transaction fee. The proposed comment would also state that a financial institution could also offer a prepaid account product with one service plan for consumers who utilize another one of a financial institution's non-prepaid services (*e.g.,* a mobile phone service) and a different plan for consumers who only utilize a financial institution's prepaid account products. Each of these plans would be considered a ''service plan'' for purposes of proposed § 1005.18(b)(3)(iii).

18(b)(4) Specific Formatting Requirements

18(b)(4)(i) Grouping

18(b)(4)(i)(A) Short Form Disclosures

Proposed § 1005.18(b)(4)(i)(A) would contain several formatting requirements for the short form disclosure. First, proposed § 1005.18(b)(4)(i)(A) would state that the information required by proposed § 1005.18(b)(2)(i)(A) or proposed § 1005.15(c)(2), when applicable, would have to be grouped together. Proposed § 1005.18(b)(4)(i)(A) would further state that the information required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) would have to be generally grouped together and appear in the order of the Model Forms in appendix A–10(a) through (d) of this part. As discussed above, the Bureau believes that grouping the fees required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) in the top-line will more effectively direct consumers' attention to these fees, which the Bureau believes are the most important fees. The Bureau also believes that, when it is applicable, the payroll card account or government benefit account notice banner should appear at the top of the short form to ensure consumers understand that they do not have to accept such an account. Finally, proposed § 1005.18(b)(4)(i)(A) would further state that the information required by proposed § 1005.18(b)(2)(i)(B)(*5*) through (*9*) would have to be generally grouped together and appear in the order of the Model Forms in appendix A–10(a) through (d). The Bureau also proposes, in proposed § 1005.18(b)(4)(i)(A), that the textual information required by proposed § 1005.18(b)(2)(i)(B)(*10*) through (*14*) must be grouped together on the short form disclosure and in the order they appear in proposed Model Forms A–10(c) and (d). The Bureau recognizes that some consumers may focus only on fee information and not review textual information. Indeed, in testing, many consumers did not notice some of the textual information included on model forms until the facilitator pointed it out to them. The Bureau therefore seeks comment on whether there is a better way to group the textual information on the short form disclosure to increase the likelihood that consumers will read it.

The Bureau further proposes in § 1005.18(b)(4)(i)(A) that the URL of the Web site disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) would not be permitted to exceed twenty-two characters, and that it must be meaningfully named. By meaningfully named, the Bureau means a URL that uses real words or phrases, particularly those related to the actual prepaid account product. The Bureau believes twenty-two characters is the maximum length of a URL that can fit legibly on a short form disclosure that would fit on most existing retail packaging material.

The Bureau believes these parameters will ensure that a consumer can easily enter the URL of the Web site listed on the short form into a mobile device when shopping in a retail store in order to access the long form. Using a meaningfully named URL will also ensure that it is easy for a consumer to understand, which the Bureau believes will increase the likelihood that a consumer would utilize the URL to seek out more information about a prepaid account product.

Nevertheless the Bureau seeks comment on all aspects of this part of the proposal. Specifically, the Bureau solicits comment on whether a requirement that the URL be meaningfully named could make it more challenging for financial institutions to use shortened URLs or other mechanisms on the short form to facilitate accessibility of the long form in retail locations.

18(b)(4)(i)(B) Long Form Disclosures

The Bureau proposes in § 1005.18(b)(4)(i)(B) that all fees that may be imposed by the financial institution in connection with a prepaid account that proposed § 1005.18(b)(2)(ii)(A) would require to be disclosed in the long form must be generally grouped together and organized by categories of function for which a consumer would utilize the service associated with each fee. The Bureau believes that disclosing fees in categories will aid consumers' navigation of the long form disclosure, which would include all of a prepaid account's fees and could be much longer than the short form disclosure. Proposed § 1005.18(b)(4)(i)(B) would also require that text describing the conditions under which a fee could be imposed would have to appear in the table directly to the right of the numeric fee amount disclosed. The Bureau also proposes, in § 1005.18(b)(4)(i)(B), that the telephone number, Web site and mailing address, the statement regarding FDIC insurance, if applicable, and the CFPB Web site and telephone number, as required to be disclosed by proposed § 1005.18(b)(2)(ii)(C) through (E) must be generally grouped together. Proposed § 1005.18(b)(4)(i)(B) would also require that the information required by § 1005.18(b)(2)(ii)(B) would have to be generally grouped together.

18(b)(4)(i)(C) Multiple Service Plan Disclosures

The Bureau proposes in § 1005.18(b)(4)(i)(C) that when a financial institution provides disclosures in compliance with proposed § 1005.18(b)(3)(iii)(B)(*1*) and discloses the fee schedules of multiple service plans together on one short form, the fees required to be listed pursuant proposed § 1005.18 (b)(2)(i)(B)(*1*) through (*7*) that vary among service plans must be generally grouped together, the fees that are the same across all service plans must be grouped together, as set forth in proposed appendix A–10(f). Proposed § 1005.18(b)(4)(i)(C) would further state that if the periodic fee varies between service plans, the financial institution must use the term ''plan fee,'' or a substantially similar term when disclosing the periodic fee for each service plan. The Bureau believes that, when a financial institution chooses to disclose multiple service plans together on one short form, it is most useful for a consumer to see all the fees that vary among plans grouped together to more easily compare the different plans. The Bureau seeks comment on whether this grouping distinction for short forms that include multiple service plans makes sense.

Proposed § 1005.18(b)(4)(i)(C) would also state that the incidence-based fees disclosed pursuant to proposed § 1005.18 (b)(2)(i)(B)(*8*) must be grouped with the fees that are the same across all service plans as set forth in proposed Model Form A–10(f). The Bureau believes that since a financial institution would have to consider total incidence across all plans when determining its incidence-based fee disclosure to comply with proposed § 1005.18(b)(2)(i)(B)(*8*), it makes sense that these fees would be grouped with the fees that are the same across all service plans. *See* proposed comment 18(b)(2)(i)(B)(*8*)–1.

18(b)(4)(ii) Prominence and Size

Proposed § 1005.18(b)(4)(iii) would set forth the prominence and size requirements for the short form and long form disclosures. Generally, the Bureau believes that the information provided to consumers in the short and long form disclosure should appear in a large enough font size to ensure that consumers can easily read the information. Further, in its testing, the Bureau found that some participants had to use reading glasses or otherwise struggled to read existing prepaid account disclosures. Also, many participants reported a preference for larger font sizes to facilitate their ability both to read and to understand disclosures. Thus, as discussed below, the Bureau has proposed minimum font size requirements for both the short form and long form disclosures in order to ensure that consumers can easily read the disclosures. In addition, the Bureau believes that the relative font sizes of the disclosures made on the short form should ensure that consumers' attention is quickly drawn to the most important information about a prepaid account. As described in more detail below, the Bureau is therefore also proposing certain minimum font sizes for the short form disclosure requirements described in proposed § 1005.18(b)(2)(i) in addition to the requirement that the top-line fees (*i.e.,* periodic fee, per purchase fees, ATM withdrawal fees, and cash reload fee) appear more prominently than all of the other information included on the short form to create a visual hierarchy of information.

Proposed § 1005.18(b)(4)(ii)(A) would require that all text used to disclose the information pursuant to proposed § 1005.18(b)(2) must be in a single, easy-to-read type face. Proposed § 1005.18(b)(4)(ii)(A) would also state that all text included in the tables that would be required to be disclosed by proposed § 1005.18(b)(3)(iii) would have to be all black or one color type and printed on a white or other neutral contrasting background whenever practical. The Bureau believes that contrasting colors for the text and the background of the short form and long form disclosures will make it easier for consumers to read the disclosure. The Bureau believes that using a black color for the text and a white color for the background of the form is the most clear presentation, but the Bureau also recognizes that other similarly dark colors for text with a neutral background color could just as clearly present the information. For example, when including the payroll card account notice banner at the top of the short form, a financial institution could use a grey background if the background of the rest of the short form is white. The Bureau believes this type of distinction would make it easier for a consumer to see that banner.

Proposed § 1005.18(b)(4)(ii)(B)(*1*) would require that the information required to be disclosed by proposed § 1005.18(b)(2)(i)(A) and proposed § 1005.15(c)(2) for the payroll card account or government benefit account notices banners would have to appear in a minimum eight-point font or the corresponding pixel size and appear in no larger a font than what is used for the information required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) in the top-line portion of the short form. Proposed § 1005.18(b)(4)(ii)(B)(*2*) would require that the top-line fees required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) be more prominent than the other parts of

the disclosure required by proposed § 1005.18(b)(2)(i) and appear in a minimum 11 point font or the corresponding pixel size.

As discussed above, the Bureau believes that consumers commonly incur these top-line fees when a financial institution imposes charges for these services. In the Bureau's consumer testing, participants reported that these fee disclosures were the most important to them. As discussed in the section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*), the Bureau recognizes that a financial institution may not charge a fee for all of these services. For example, a financial institution might not charge any per purchase fees when it imposes a monthly fee. The Bureau, however, still believes that such fees should be disclosed in a more prominent and larger font size than other information on the short form disclosure in order to draw consumers' attention to this information before acquiring a prepaid account. In proposed Model Form A–10(f), the amounts of these fees appear in bold to make them more prominent than the other information on the short form. The Bureau is also proposing pixel sizes because it acknowledges that font sizes could vary when applied in electronic contexts. Though the font sizes may differ, the relative sizes of the components of the short form would have to remain consistent to maintain the visual hierarchy of information included in the form.

Additionally, the Bureau proposes in § 1005.18(b)(4)(ii)(B)(*2*) that the fee disclosures required by proposed § 1005.18(b)(2)(i)(B)(*5*) through (*9*), namely, the ATM balance inquiry fees, inactivity fee, and incidence-based fees, must appear in a minimum eight-point font or the corresponding pixel size and appear in no larger a font than what is used to disclose the information required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*). As discussed earlier, while the Bureau believes that these fees are important for a consumer to know pre-acquisition, the Bureau believes that these fees are less likely to drive most consumers' acquisition decisions when shopping among prepaid accounts and thus should be disclosed using a smaller font size.

Proposed § 1005.18(b)(4)(ii)(B)(*2*) would also require that the textual information disclosed on the short form pursuant to proposed § 1005.18(b)(2)(ii)(*10*) through (*14*) must appear in a minimum seven-point font or corresponding pixel size and must appear in no larger a font than what is used to disclose the ATM balance inquiry fees, inactivity fee, and incidence-based fees that would have to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*5*) through (*9*).

The Bureau notes that the proposed minimum font sizes are likely also the maximum sizes that could be used on the short form to ensure that it will still fit on most packaging material currently used in retail locations. In other acquisition scenarios, however, when space constraints are not as much of an issue, the Bureau expects that financial institutions would use larger versions of the short form. For example, when distributing disclosures for payroll card accounts in printed form, financial institutions could use 8.5 by 11 inch pieces of paper to present a larger version of the short form, as long as the form maintains the visual hierarchy of having the information on the short form gradually decrease in size from top to bottom. The Bureau further proposes in § 1005.18(b)(4)(ii)(B)(*2*) that the statement disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*10*), and the telephone number and URL disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) must be more prominent than the information disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*12*) through (*14*) and proposed § 1005.18(b)(2)(i)(C). The Bureau believes that it is particularly important for a consumer to see this information on the short form, and that making it more prominent than the other textual language on the short form could help to draw consumers' attention to these disclosures.

Proposed § 1005.18(b)(4)(ii)(B)(*2*) would also state that text used to distinguish each of the two fees that are required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*2*), (*3*) and (*5*), or to explain the duration of inactivity that triggers a financial institution to impose an inactivity fee pursuant to proposed § 1005.18(b)(2)(i)(B)(7) would have to appear in at least six-point font or corresponding pixel size and appear in no larger a font than what is used for information required to be disclosed by § 1005.18(b)(2)(i)(B)(*9*) through (*12*). The Bureau believes that this descriptive information is less important than the actual fee information and therefore should be in a smaller font or pixel size.

Finally, proposed § 1005.18(b)(4)(ii)(B)(*3*) would require that the explanatory text disclosed pursuant to proposed § 1005.18(b)(2)(i)(C) when any of the fees included on the short form could vary would have to be in a minimum seven-point font and appear in no larger the font than what is used to disclose the fees not in the top-line as required by proposed § 1005.18(b)(2)(i)(B)(*5*) through (*8*). The Bureau believes that this explanatory text should be in the same font size as the rest of the textual information included on the short form.

The Bureau is proposing § 1005.18(b)(4)(ii)(C) to require that the fees and other information required to be disclosed in the long form by proposed § 1005.18(b)(2)(ii) would have to appear in at least eight-point font or the corresponding pixel size. The Bureau believes that the long form, which will list all of a prepaid account's fees, need only appear in a font that is clear enough for consumers to read. The Bureau does not believe any part of the long form should be more prominent than another part. Thus, the Bureau is not proposing any rules regarding the relative font size of information disclosed in the long form.

The Bureau is proposing in § 1005.18(b)(4)(ii)(D) that when providing disclosures in compliance with proposed § 1005.18(b)(3)(iii)(B)(*1*) and disclosing the fee schedules of multiple service plans together on one form, disclosures required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*9*) must appear in a minimum seven-point font or the corresponding pixel size. Proposed § 1005.18(b)(4)(ii)(D) would also require the disclosures required by proposed § 1005.18(b)(2)(i)(B)(*10*) through (*14*) to appear in the font sizes set forth in proposed § 1005.18(b)(4)(ii)(B)(*2*).

18(b)(5) Segregation

Proposed § 1005.18(b)(5) would explain that disclosures required under this section that are provided in writing or electronically would have to be segregated from everything else and could contain only information that is directly related to the disclosures required under this section. The Bureau believes it is important that only the information it would require to be disclosed be included on the short form and long form disclosures. As noted, financial institutions (or whatever entity is responsible for marketing the prepaid account) could use the remainder of a prepaid account's packaging material or Web site to disclose other information to a consumer, but the Bureau believes it is important to limit the amount of information permitted in its required disclosures to protect the integrity of forms' design.

18(b)(6) Prepaid Accounts Acquired in Foreign Languages

Regulation E generally permits, but does not require, that disclosures be made in a language other than English, provided that where foreign language

disclosures are provided the disclosures are made available in English upon a consumer's request. *See* § 1005.4(a)(2). When it issued regulations on remittance transfers, the Bureau altered Regulation E's general requirement for foreign language disclosures to require disclosures be made in English in addition to a foreign language if that foreign language is used principally by the remittance transfer provider to advertise, solicit, or market remittance transfer services at the office in which the sender conducts a transaction or asserts an error. (§ 1005.31(g)(1)(i)). The Bureau amended Regulation E in this way pursuant to a statutory mandate in Section 1073 of the Dodd-Frank Act.

The Bureau proposes also to modify the general Regulation E foreign language requirement for prepaid accounts such that proposed § 1005.18(b)(6) would require that if a financial institution principally uses a foreign language on prepaid account packaging material, by telephone, in person, or on the Web site a consumer utilizes to acquire a prepaid account, the short form and long form disclosures made pursuant to proposed § 1005.18(b)(2)(i) and (ii) would have to be provided in that same foreign language. A financial institution would also have to provide the long form required to be disclosed by proposed § 1005.18(b)(2)(ii) in English upon a consumer's request and on any part of the Web site where it provides the long form disclosure in a foreign language.

As noted above, this proposal is made pursuant to the Bureau's authority under EFTA sections 904(a) and (c), 905(a), and Dodd-Frank Act section 1032(a). The Bureau notes that this proposed approach to foreign language disclosures applies only to prepaid accounts and would not alter the application of the general Regulation E provision for any other type of account. The Bureau believes that if a financial institution is primarily using a foreign language on the interface that a consumer sees or uses to initiate the process of acquiring a prepaid account, consumers should receive pre-acquisition disclosures in that foreign language to ensure that they are able to understand them. The Bureau also believes that such a consumer might benefit from receiving the long form disclosure in both the foreign language and English in case a consumer is comfortable speaking the language, but may only read English, or if a family member who speaks English assists a consumer with managing their prepaid account.

The Bureau recognizes, however, that requiring financial institutions to provide short form disclosures in two languages could be burdensome. The Bureau therefore seeks comment on whether it is feasible for financial institutions in all acquisition scenarios to provide the long form disclosure in English in addition to in the foreign language in which the account is marketed, and whether financial institutions typically already provide disclosures in both languages. The Bureau also solicits comment on whether financial institutions should also provide the short form disclosure in English in all cases. Proposed comment 18(b)(6)–1 would provide several examples as to when financial institutions would have to provide the short form and long form disclosures in a foreign language. Specifically, the proposed comment would clarify that if, for example, a financial institution uses mostly Spanish on the packaging material of a prepaid account sold in a retail store, even though a few words appear in English, then the short form and, if accessed by the consumer, long form disclosure provided to a consumer must also be in Spanish. Proposed comment 18(b)(6)–1 would also clarify that if the homepage of the Web site a consumer visits to acquire a prepaid account is mostly in Spanish, the short form and long form disclosure a consumer receives pre-acquisition must also be in Spanish. Additionally, the proposed comment would clarify that a consumer who calls a telephone number to acquire a prepaid account and either speaks to a customer service agent in Spanish or interacts with an IVR system in Spanish must also receive the short form and long form information in Spanish in accordance with proposed § 1005.18(b)(2)(ii). Finally, the proposed comment would clarify that if a consumer speaks with a customer service agent in a foreign language in a bank or credit union branch location, this would be considered ''in person,'' and a consumer would have to receive the short form and long form disclosures in that foreign language to comply with proposed § 1005.18(b)(6).

18(b)(7) Disclosures on Prepaid Account Access Devices

Proposed § 1005.18(b)(7) would require that certain disclosures be made on the actual prepaid account access device itself. Specifically, the Bureau proposes that financial institutions must disclose the name of the financial institution, the URL of a Web site, and a telephone number that a consumer can use to access information about a prepaid account. Proposed § 1005.18(b)(7) would also state that if a financial institution does not provide a physical access device in connection with a prepaid account, the Bureau is proposing that the disclosure must appear at the URL or other entry point a consumer must visit to access the prepaid account electronically. The Bureau further proposes that disclosure made on an accompanying document, such as a terms and conditions document, on packaging material surrounding an access device, or on a sticker or other label affixed to an access device would not constitute a disclosure on the access device. Proposed comment 18(b)(7)–1 would clarify that a consumer might use this information disclosed on the access device to contact a financial institution with a question about a prepaid account's terms and conditions, or to report when an unauthorized transaction has occurred involving a prepaid account.

The Bureau believes it is important for a consumer to be able to access fee information, as well as check an account's balance, and have a means for reporting unauthorized transactions, even after a consumer has acquired a prepaid account. Disclosing telephone numbers on an access device will allow consumers to access this information if they are not in the location where they have retained the disclosures or are not able to access disclosures via the internet.

18(c) Access to Prepaid Account Information

EFTA section 906(c) requires that a financial institution provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Section 1005.9(b), which implements EFTA section 906(c), generally requires a periodic statement for each monthly cycle in which an electronic fund transfer occurred or, if there are no such transfers, a periodic statement at least quarterly.[279] Financial institutions must deliver periodic statements in writing and in a form that the consumer can keep, unless consent is received for electronic delivery or unless Regulation E provides otherwise. *See* §§ 1005.4(a)(1) and 1005.9(b).

In the Payroll Card Rule, the Board modified the periodic statement requirement for payroll card accounts similar to what it had done previously for government benefit accounts under § 1005.15. Pursuant to existing

[279] The periodic statement must include transaction information for each EFT, the account number, the amount of any fees assessed, the beginning and ending account balance, the financial institution's address and telephone number for inquiries, and a telephone number for preauthorized transfers. § 1005.9(b).

§ 1005.18(b), financial institutions can provide periodic statements that comply with the general provisions in Regulation E, or alternatively, the institution must make available to the consumer: (1) The account balance, through a readily available telephone line; (2) an electronic history of account transactions that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)); and (3) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)).

The Bureau is proposing new § 1005.18(c)(1) and (2) to apply Regulation E's periodic statement requirement to prepaid accounts, and an alternative that would allow financial institutions to instead provide access to account balance by telephone, at least 18 months of transaction history online, and at least 18 months written transaction history upon request. Proposed § 1005.18(c)(3) would require financial institutions to disclose all fees assessed against the account, in any electronic or written account histories and periodic statements. In addition, the Bureau proposes in § 1005.18(c)(4) to require financial institutions to disclose, in any electronic or written account histories and periodic statements, monthly and annual summary total of the amount of all fees imposed on a prepaid account, and the total amounts of deposits to and debits from a prepaid account.

As discussed below in the section-by-section analysis of proposed § 1005.18(c)(1), (3), and (4), to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to propose an exception to the periodic statement requirements of EFTA section 906(c) and to modify the periodic statement requirements of EFTA section 906(c) to require inclusion of all fees charged and a summary total of both monthly and annual fees. These proposed revisions will assist consumers' understanding of their prepaid account activity. In addition, the Bureau is also using its disclosure authority pursuant to the Dodd-Frank Act section 1032(a) because the Bureau believes that disclosure of fee and account activity summaries ensures that the features of prepaid accounts, over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with prepaid accounts.

18(c)(1) Periodic Statement Alternative

As discussed above, financial institutions that issue payroll cards can provide periodic statements that comply with the general provisions in Regulation E, or alternatively, the institution must make available to the consumer: (1) The account balance, through a readily available telephone line; (2) an electronic history of account transactions that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)); and (3) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)). *See* existing § 1005.18(b).

Relatedly, the FMS Rule requires a prepaid card receiving a Federal payment (such as Social Security benefits, Federal tax refunds, or Federal government wages) to satisfy several conditions, including that the card issuer must comply with all of the requirements of, and provide the cardholder with all of the consumer protections that apply to, a payroll card account under Regulation E. *See* 31 CFR 210.5(b)(5). By virtue of the FMS Rule, the Bureau believes that a majority of prepaid account programs are presently complying with Regulation E's periodic statement alternative for payroll card accounts. Indeed, in its Study of Prepaid Account Agreements, the Bureau found that almost all prepaid account agreements reviewed (including 99.03 percent of agreements reviewed for GPR card programs) provide electronic access to account information;[280] a majority of programs reviewed (including 73.91 percent of agreements for GPR card programs) explicitly provide that transactional history is available for at least 60 days (which is consistent with the payroll card account alternative in existing § 1005.18(b));[281] and most programs reviewed (including 88.41 percent of agreements for GPR card programs) make clear that paper statements or paper account histories are available upon request.[282]

This is consistent with what other studies of the prepaid industry have found. For example, the Center for Financial Services Innovation (CFSI) found in its review of 18 GPR card programs,[283] representing an estimated 90 percent of the GPR card marketplace, that all card programs reviewed allowed cardholders to obtain balance information online, by calling customer service, by text message, or via mobile app or mobile-enabled Web site. CFSI found that eleven out of fifteen cards for which information was available (representing about 60 percent of the market sampled) provided at least two years of transactional data online, three provided one year of data, and one card provided six months of data.[284] CFSI also found that fifteen cards (representing approximately 75 percent of the market sampled) allowed cardholders to make one-time requests for paper statements, and nine cards (about 40 percent of the market sampled) allowed cardholders to receive ongoing monthly statements, typically for a fee ranging between $1 and $3.[285] In a recent review of 66 GPR card programs, the Pew Charitable Trusts found that 45 cards (68 percent) disclosed a paper statement fee ranging from 99 cents to $10, with a median fee of $2.95; seven cards (11 percent) disclosed that paper statements were free, and 14 cards (21 percent) did not disclose any fee (or lack thereof) for paper statements. Pew also found that 65 cards (98 percent) disclosed that transaction information is provided online for free.[286]

In its Prepaid ANPR, the Bureau sought comment on whether it was appropriate to modify Regulation E's general requirements for prepaid cards and, as an example, asked whether it was necessary to extend the requirement to provide periodic paper statements to prepaid cards. In response, most industry and trade association commenters recommended that the Bureau extend to prepaid cards the Payroll Card Rule's alternative method of complying with Regulation E's periodic statement requirement. Many of these commenters argued that paper statements are not a viable alternative for prepaid cards and that electronic access to account information—as

[280] *See* Study of Prepaid Account Agreements, at 18 tbl. 5.

[281] *See id.* at 19 tbl. 6.

[282] *See id.* at 21 tbl. 8.

[283] Programs reviewed by CFSI included ''cards issued by the largest program managers in the marketplace, as well as a selection of smaller program managers that have particularly innovative cards.'' Ctr. for Fin. Services Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 6 (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.*

[284] *Id.* at 12. The CFSI study did not note, however, whether any prepaid programs might charge fees for these methods of accessing account information.

[285] *Id.* at 13.

[286] 2014 Pew Study, at 19–20.

provided under the Payroll Card Rule—is more consistent with current consumer needs and expectations. They explained that consumers have shown little interest in receiving paper statements for prepaid accounts and that consumers prefer to have access to current and historical account information online. In addition, information contained on a monthly paper statement may be considered by consumers to be ''stale'' by the time it arrives. These commenters also cited the fact that prepaid card users are often transient which results in paper statements often being returned as undeliverable. Finally, industry commenters expressed concern that a paper statement requirement would be cost prohibitive and would ultimately result in fee increases.

Consumer groups' comments regarding whether the Bureau should require written periodic statements were mixed. Some groups urged that paper statements be provided by default for all prepaid accounts unless the consumer explicitly opts out. One group argued this was necessary because, based on its research, many cards do not provide account history information sufficient to determine whether an unauthorized transaction occurred. Several groups argued that prepaid accounts should be exempt from the paper statement requirement only if they offer no credit or overdraft features and the underlying funds are held in an account with deposit insurance. Other groups suggested that it is appropriate to forego paper statements for prepaid accounts so long as consumers are able to receive ad hoc paper statements upon request.

The Bureau conducted additional outreach to industry regarding the usage of written statements by consumers and the cost to financial institutions of providing such statements. Based on this outreach, the Bureau believes that there may be significant costs in providing monthly paper statements for all prepaid accounts. Beyond the costs of printing and mailing statements, the Bureau also understands, based on industry outreach, that there could be a high incidence of returned mail due to the transient nature of some prepaid account users if paper periodic statements were required for all prepaid accounts. Further, in its focus groups and consumer testing, the Bureau asked participants if they were satisfied with the information they have about their account and whether they would value a monthly electronic or paper statement. The Bureau notes that almost no participants said that they would want to receive a monthly paper statement that they had not requested. Instead, almost all participants stated that free access to account information online and by telephone provided by prepaid issuers and program managers largely met their needs.

Based on its analysis, the Bureau is proposing to extend to prepaid accounts the Payroll Card Rule's alternative to providing periodic statements (existing § 1005.18(c)(1)), with certain modifications that would be applicable to payroll card accounts as well as to prepaid accounts, as described below. The Bureau believes that the methods of access to account information in the Payroll Card Rule generally strike the appropriate balance between providing consumers the transactional history they need without unnecessarily burdening financial institutions. The Bureau believes that requiring written monthly statements to all prepaid card consumers could increase cost and burden. Thus, the Bureau is proposing to extend the Payroll Card Rule's provisions regarding access to account information to prepaid accounts, with certain modifications as described below. As noted above, this proposed revision is authorized under EFTA section 904(c) and section 1032(a) of the Dodd-Frank Act. As with the Payroll Card Rule, financial institutions would generally be able to provide traditional periodic statements for prepaid accounts, whether in paper form or electronically with E-Sign consent,[287] in lieu of the alternative in § 1005.18(c)(1) discussed below, but consistent with proposed § 1005.18(c)(3) and (4) below.

18(c)(1)(i)

As discussed above, a financial institution need not furnish periodic statements pursuant to § 1005.9(b) if it instead follows the periodic statement alternative for payroll card accounts. *See* existing § 1005.18(b)(1). The first part of that alternative, § 1005.18(b)(1)(i), currently requires a financial institution to provide access to the consumer's account balance through a readily available telephone line. The Bureau is proposing to extend this requirement in § 1005.18(b)(1)(i), renumbered as § 1005.18(c)(1)(i), to all prepaid accounts. The Bureau reminds financial institutions that, when providing balance information by telephone as part of the alternative to the § 1005.9(b) periodic statement requirement, neither they nor their service providers would be permitted to charge consumers for accessing this information required to be provided pursuant to proposed § 1005.18(c)(1)(i).

As the Board explained in the supplementary information to the Payroll Card Rule, a readily available telephone line for providing balance information must be a local or toll-free telephone line that, at a minimum, is available during standard business hours. The Board noted that it expected that, in most cases, institutions would provide 24-hour access to balance information through an automated line, which would ensure that consumers could access balance information at their convenience. Because the Board believed that it might be operationally difficult for some institutions to provide information about 60 days' worth of transactions through a telephone system, the Payroll Card Rule did not require institutions to provide information about specific transactions by telephone.[288] For substantially similar reasons, the Bureau believes it is appropriate to propose extending existing § 1005.18(b)(1)(i), renumbered as new § 1005.18(c)(1)(i), to all prepaid accounts.

As discussed above in the section-by-section analysis of proposed § 1005.15(d)(1)(i), the periodic statement alternative for government benefit accounts (both currently and as proposed) requires access to balance information through a readily available telephone line as well as at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer). The Bureau seeks comment on whether a similar requirement to provide balance information at a terminal should be added to the requirements of proposed § 1005.18(c)(1)(i) for prepaid accounts generally. As noted above, the Bureau is also requesting comment on whether, alternatively, the requirement to provide balance information for government benefit accounts at a terminal should be eliminated from § 1005.15 given the other enhancements proposed therein and for parity with proposed § 1005.18.

18(c)(1)(ii)

The second part of the periodic statement alternative for payroll card accounts, § 1005.18(b)(1)(ii), currently requires financial institutions to provide an electronic history of the consumer's account transactions, such as through a Web site, that covers at least 60 days

[287] As explained above in the section-by-section analysis of proposed § 1005.18(b)(3)(i), the E-Sign Act generally allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if a consumer has affirmatively consented to such use and has not withdrawn such consent, and certain format of delivery requirements are met.

[288] *See* 71 FR 51437, 51443 (Aug. 30, 2006).

preceding the date the consumer electronically accesses the account. Based on the Bureau's Study of Prepaid Account Agreements, other public studies, and outreach, the Bureau believes that virtually all prepaid account providers make available some form of free electronic access to balance and transaction history information [289] and that at least 60 days of account history is typically provided.[290] Further, the Bureau believes that, based on its outreach to industry stakeholders and recent public studies, many prepaid programs provide more extensive online account history information than is currently required by the Payroll Card Rule (60 days).[291] Some prepaid account providers also offer periodic (*e.g.,* monthly) electronic statements at no charge in addition to account history.[292]

The Bureau is proposing to extend this requirement in existing § 1005.18(b)(1)(ii) to prepaid accounts, renumbered as new § 1005.18(c)(1)(ii), and to expand the length of time that online access must cover from 60 days to 18 months. The Bureau is proposing to extend this time period because it believes that based on how consumers are currently using prepaid accounts, more than 60 days of account history may be, in many cases, beneficial for consumers. While recent account history is important for consumers tracking balances or monitoring for unauthorized transactions, a longer available account history serves a variety of potential purposes. For example, some consumers might need to demonstrate on-time bill payment or to compile year-end data for tax preparation purposes. The Bureau also believes that a consumer may realize during any given year that he needs financial records from the prior calendar year and that access to 18 months of prepaid account history will give the consumer six months into the next calendar year to make such a request. In addition, based on outreach to prepaid account providers and recent publicly available studies, as discussed above, the Bureau believes that many prepaid accounts provide at least 12 months of account history and that, even if they do not, the cost of extending existing online histories to 18 months should be minimal. The Bureau reminds financial institutions that, when providing electronic access to account information as part of the alternative to the § 1005.9(b) periodic statement requirement, neither they nor their service providers would be permitted to charge consumers for providing access to account information required pursuant to proposed § 1005.18(c)(1)(ii).

Alternative Approaches Considered by the Bureau

The Bureau considered other alternatives to the Payroll Card Rule's approach regarding access to account information. Among them, the Bureau considered proposing to require electronic periodic statements for all prepaid accounts, in addition to ongoing electronic access to account information. An electronic periodic statement requirement would require providers to deliver electronic periodic statements to consumers, even if the provider did not have the consumer's E-Sign consent. The Bureau viewed this as a potential, less-costly alternative to written statements. However, the Bureau questions whether the benefit of providing electronic periodic statements would justify the cost given that the existing Payroll Card Rule and this proposal require that electronic and written histories of account transactions provided as an alternative to § 1005.9(b) contain the information set forth in § 1005.9(b) for periodic statements generally. *See* section-by-section analysis of proposed § 1005.18(c)(2).

The Bureau additionally considered proposing to require financial institutions that do not provide periodic statements pursuant to § 1005.9(b) to periodically send an informational email or text message notification to consumers, for example, noting the prepaid account's remaining balance. The Bureau similarly considered requiring financial institutions to contact consumers by email or text message each time an inactivity, dormancy, or similar fee is assessed on the consumer's prepaid account. Such requirements would help remind consumers of the existence of prepaid accounts that they may have forgotten or have otherwise left dormant with unused balances. The Bureau considered that such requirements likely would be limited to those prepaid accounts for which consumers provided email addresses or mobile phone numbers and consented to receive such communications from the financial institution. The Bureau ultimately concluded, however, not to include such a requirement in this Proposed Rule because such a requirement may be overly burdensome given that consumers would have other access to account balance and transactional history under the proposal. The Bureau solicits comments on periodic statement alternatives on prepaid accounts.

In the context of overdraft and other credit features on prepaid accounts, discussed in more detail below, the Bureau has considered the possibility of requiring additional real-time notifications of transactions triggering an overdraft or the accessing of a linked credit feature, or requiring real-time opt-in by consumers in order to approve each overdraft or other credit transaction in addition to what it proposes herein (and not in lieu of what § 1005.17 requires for deposit accounts). The Bureau understands that there may be technological, operational, and procedural challenges to the timing and delivery of such a notice or compliance with such an opt-in requirement, particularly in the point of sale retail environment. The Bureau is unsure at this time whether such a procedure could be implemented given that notifications and/or consent might require multiple communications among financial institutions, card networks, and merchants. To the extent such real-time notification and consent could be provided or obtained by mobile device or other means, the Bureau continues to monitor developments with respect to real-time opt-in. Accordingly, the Bureau is not proposing any requirements related to real-time notification or opt-in, but solicits comment on possible options and suggestions for what it might require in this regard for prepaid accounts.

18(c)(1)(iii)

The third part of the periodic statement alternative for payroll card accounts, § 1005.18(b)(1)(iii), currently requires financial institutions to provide

[289] As noted above, in its Study of Prepaid Account Agreements, the Bureau found that 97.85 percent of all prepaid account agreements reviewed indicated that electronic access to account information was available; the remaining 2.15 percent of agreements were unclear as to whether such access was available. *See* Study of Prepaid Account Agreements, at 18 tbl. 5.

[290] The majority of account agreements reviewed in the Study of Prepaid Account Agreements that addressed access to account information with any specificity simply stated that account information would be available for at least the past 60 days (66.15 percent of all agreements reviewed), a small portion explicitly provided for a longer period (7.40 percent), and the remainder were unclear as to the time period (26.46 percent). *See id.* at 19 tbl. 6.

[291] *See, e.g.,* Ctr. for Fin. Services Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 12 (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf* (finding that about 60 percent of the market sampled, which is estimated to represent approximately 90 percent of the GPR card marketplace, allowed cardholders to access at least two years of transactional data online; the remaining products provided six months or one year of data).

[292] The Study of Prepaid Accounts found that 57.54 percent of agreements reviewed specifically stated that electronic periodic statements (rather than just electronic access to account history) are available. *See* Study of Prepaid Account Agreements, at 20 tbl. 7.

a written history of the consumer's account transactions promptly in response to an oral or written request, which covers at least 60 days preceding the date the financial institution receives the consumer's request. Similar to electronic account access above, the Bureau is proposing to extend this requirement in current § 1005.18(b)(1)(iii) to all prepaid accounts, renumbered as proposed § 1005.18(c)(1)(iii), and to expand the length of time for which written history must be provided from 60 days to 18 months.

In its Study of Prepaid Account Agreements, the Bureau found that most of the agreements reviewed indicate that paper account histories or paper statements are made available upon request.[293] For those agreements that indicate fees are charged for providing paper account histories or statements,[294] the amount of the fee varied widely (ranging from $0.75 to $10).[295] As discussed previously, CFSI found 15 out of 18 GPR cards it reviewed (representing approximately 75 percent of the market sampled) allowed cardholders to make one-time requests for paper statements, and nine cards (about 40 percent of the market sampled) allowed cardholders to receive ongoing monthly statements, typically for a fee ranging between $1 and $3.[296]

As discussed above, the Bureau understands from outreach to industry and its own consumer research that consumer utilization of written account histories is very low, regardless of whether a fee is charged to obtain such information. Of those prepaid account providers that shared specific statistics with the Bureau, none had greater than one percent of active customers requesting written histories for GPR cards on a regular basis, regardless of whether the entity made electronic statements available as well. The Bureau also observed during its consumer focus groups that participant receipt of or desire for written account histories was very low.

The Bureau is proposing to extend existing comment 18(b)–1, which requires that the history of transactions provided under existing § 1005.18(b)(1)(ii) and (iii) reflect transactions once they have been posted to the account, and comment 18(b)–2 regarding retainability of electronic account history, to all prepaid accounts as new comments 18(c)–1 and –2, and revise the internal paragraph references to conform with other numbering changes the Bureau is proposing, but otherwise leave these two comments unchanged.

As the Board explained in the Payroll Card Rule, it anticipated that, in general, written account histories would be sent the next business day or soon after an institution receives the consumer's oral or written request. The Board explained that institutions also may designate a specific telephone number for consumers to call and a specific address for consumers to write to request a written copy of account transactions. The Board also noted that, although § 1005.18 does not address the issue, it believed that charging fees to consumers who make occasional requests for written histories could have a chilling effect on consumers' ability to obtain information about transactions and, thus, to exercise their error resolution rights.[297] The Bureau shares these concerns.

The Bureau reminds financial institutions that, when providing written account histories upon request as part of the alternative to the § 1005.9(b) periodic statement requirement, generally, neither they nor their service providers would be permitted charge consumers for providing this required information pursuant to proposed § 1005.18(c)(1)(iii). During the Bureau's outreach, many industry participants indicated that consumers very rarely make these types of requests, so the Bureau does not anticipate that this requirement would pose a significant burden.

The Bureau recognizes, however, that in certain situations consumers' requests for written account information may exceed what would be required under the proposal; therefore, the Bureau is proposing to clarify in new comment 18(c)–3 those instances where a financial institution would be permitted to charge a fee for providing such information. Proposed comment 18(c)–3 would include several examples of requests that exceed the requirements of proposed § 1005.18(c)(1) for providing account information and for which a financial institution would be permitted to charge a fee. A financial institution may assess a fee or charge to a consumer for responding to subsequent requests for written account information made in a single calendar month. For example, if a consumer makes a request for 18 months of written account transaction history on June 1 and makes a request for 18 months of written history on August 5, the financial institution may not assess a fee or charge to the consumer for responding to either request. However, if the consumer requests 18 months of written history on June 1 and then makes the same request on June 15, the financial institution may assess a fee or charge to the consumer for responding to the request made on June 15, as this is the second request in the same month. If a financial institution maintains more than 18 months of account transaction history, it may assess a fee or charge to the consumer for providing a written history of the consumer's account information for transactions occurring more than 18 months prior to the date the institution receives the consumer's request, provided the consumer specifically requests the account transaction history for that time period. If a financial institution offers a consumer the ability to request automatic mailings of written history on a monthly or other periodic basis, it may, at its option, assess a fee or charge for such automatic mailings but not for account history requested pursuant to proposed § 1005.18(c)(1)(iii).

Proposed comment 18(c)–4 would explain that a financial institution may provide fewer than 18 months of written account transaction history if the consumer requests a shorter period of time. If a prepaid account has been open for fewer than 18 months, the financial institution need only provide account information pursuant to proposed § 1005.18(c)(1)(ii) and (iii) since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution must continue to provide at least 18 months of account transaction information from the date

[293] The Study of Prepaid Account Agreements found that, across all agreements reviewed, 89.23 percent stated that paper statements or account histories are available. For payroll card programs, 96 percent of agreements reviewed stated that paper statements or account histories were available, and 100 percent for government benefit cards. For GPR cards, 88.41 percent of agreements, and 64.29 percent of agreements for all other types of programs stated that paper statements or account histories were available. *See* Study of Prepaid Account Agreements, at 21 tbl. 8.

[294] The Study of Prepaid Account Agreements found that, across all agreements reviewed that indicated a paper statement or account history is available, 32.41 percent do not charge a fee; 46.90 percent specifically state a fee; 8.62 percent indicated that a fee would be charged but did not list the amount; and for 12.07 percent of agreements the Bureau was unable to find fee information for the programs generally. *See id.* at 22 tbl. 9.

[295] The Study of Prepaid Account Agreements found that, across all agreement reviewed, the average fee charged in the 136 agreements that specified a non-zero fee amount was $3.54 and the median fee was $2.98. *See id.* at 23 tbl. 10.

[296] *See* Ctr. for Fin. Services Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 13 (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/_Prepaid_Industry_Scorecard_2014.pdf.*

[297] *See* 71 FR 51437, 51444 (Aug. 30, 2006).

the request is received. When a prepaid account has been closed or inactive for 18 months, the financial institution is no longer required to make available any account or transaction information available. The proposed comment references existing comment 9(b)–3, which provides that, with respect to written periodic statements, a financial institution need not send statements to consumers whose accounts are inactive as defined by the institution. The Bureau expects that for purposes of proposed comment 18(c)–4, a financial institution would similarly define for itself the threshold for when it considers a prepaid account inactive, consistent with existing comment 9(b)–3.

The Bureau requests comment on all aspects of proposed § 1005.18(c)(1) regarding access to prepaid account information and commentary related thereto. In particular, the Bureau seeks comment on the methods of access consumers need to their account information, and the time period needed for such access. Additionally, the Bureau requests comment on other alternatives for providing access to account information, as well as potential changes to what is proposed herein.

18(c)(2) Information Included on Electronic or Written Histories

Section 1005.18(b)(2) currently states that the history of account transactions provided under § 1005.18(b)(1)(ii) and (iii) must include the information set forth in § 1005.9(b). Section 1005.9(b) lists the various items that must be included in periodic statements, including, but not limited to, detailed transaction information and fees assessed. The Bureau proposes to renumber existing § 1005.18(b)(2) as new § 1005.18(c)(2) and revise the cross-references to correspond with proposed § 1005.18(c)(1)(ii) and (iii), but otherwise leave this requirement unchanged. The Bureau solicits comment on this proposed approach.

18(c)(3) Inclusion of All Fees Charged

The Bureau is proposing to require in new § 1005.18(c)(3) that a periodic statement furnished pursuant to § 1005.9(b) for a prepaid account, an electronic history of account transactions whether provided under proposed § 1005.18(c)(1)(ii) or otherwise, and a written history of account transactions provided under proposed § 1005.18(c)(1)(iii) must disclose the amount of any fees assessed against a prepaid account, whether for electronic fund transfers or otherwise.

EFTA section 906(c), generally implemented in § 1005.9(b), provides that, among other things, a periodic statement must include the amount of any fees assessed against an account for electronic fund transfers or account maintenance. The Bureau notes that Regulation DD requires that periodic statements disclose all fees debited to accounts covered by that regulation. § 1030.6(a)(3). Regulation DD defines ''account'' to mean ''a deposit account at a depository institution that is held by or offered to a consumer. It includes time, demand, savings, and negotiable order of withdrawal accounts.'' § 1030.2(a). Because some prepaid accounts, as proposed herein to be defined under Regulation E, may not also constitute accounts as defined under Regulation DD, the Bureau is proposing new § 1005.18(c)(3) to ensure that periodic statements and histories of account transactions for all prepaid accounts include all fees, not just those related to electronic fund transfers and account maintenance. As noted above, this proposed revision is authorized under EFTA section 904(c) and section 1032(a) of the Dodd-Frank Act.

The Bureau solicits comment on this portion of the proposal. In addition, the Bureau seeks comment on whether any other specific protections of Regulation DD, which may not apply to prepaid accounts provided by financial institutions (as defined in Regulation E) that are not depository institutions (as defined in Regulation DD), could be addressed for all prepaid accounts to ensure consistent protections for prepaid accounts regardless of who is providing the account.

18(c)(4) Summary Totals of Fees, Deposits, and Debits

The Bureau is proposing new § 1005.18(c)(4) to require that financial institutions provide a summary total of the amount of all fees assessed against the consumer's prepaid account, the total amount of all deposits to the account, and the total amount of all debits from the account, for the prior calendar month and for the calendar year to date. This information would be disclosed on any periodic statement provided pursuant to § 1005.9(b), in any electronic history of account transactions whether provided pursuant to proposed § 1005.18(c)(ii)or otherwise, and on any written history of account transactions provided pursuant to proposed § 1005.18(c)(iii). As discussed above, the Bureau is concerned that disclosure of a single ''all-in'' estimation of fees on a prepaid product's packaging or elsewhere in pre-acquisition disclosures would not be feasible and ultimately would not provide useful information to consumers. The Bureau believes, however, that providing summary information about actual account usage (including fees incurred) would be useful to consumers in understanding their actual costs in using a particular prepaid account. As noted above, this proposed revision is authorized under EFTA section 904(c) and Dodd-Frank Act 1032(a). This summary total of fees proposal is similar to the requirement to disclose fees and interest in open end credit plans under Regulation Z. *See* 12 CFR 1026.7(b)(6).

The summary total of fees would include all fees assessed against the prepaid account in each calendar month, as well as a total for the year-to-date. The summary totals of both monthly and annual fees paid, and the totals of deposits to and debits from the account on a monthly and annual basis, would be updated on an ongoing basis for each month and each year in the prepaid account's online transaction history, and would be disclosed in any ad hoc written transaction history provided in response to a consumer's request or in a periodic statement.

Proposed comment 18(c)–5 would explain that if a financial institution provides periodic statements pursuant to § 1005.9(b), total fees, deposits, and debits may be disclosed for each statement period rather than each calendar month, if different. Proposed comment 18(c)–5 would also explain that the fees that must be included in the summary total include those that are required to be disclosed pursuant to § 1005.18(b)(2)(ii)(A). For example, an institution must include the fee it charges a consumer for using an out-of-network ATM in the summary total of fees, but it need not include any fee charged by an ATM operator with whom the institution has no relationship for the consumer's use of that operator's ATM.

In addition, proposed comment 18(c)–5 would explain that the summary total of fees should be net of any fee reversals. The total amount of all debits from the account should be exclusive of fees assessed against the account. Finally, proposed comment 18(c)–5 would explain that the total deposits and total debits must include all deposits to and debits from the prepaid account, not just those deposits and debits that are the result of electronic fund transfers.

The Bureau solicits comment on this portion of its proposal. In particular, the Bureau seeks comment on whether financial institutions are able to discern the amount of third party fees charged to a consumer's prepaid account (such as fees imposed by an ATM operator where the financial institution has no

relationship with the operator) and whether it would therefore be feasible for financial institutions to include such third party fees in this summary total of fees. The Bureau also seeks comment on whether and how credit accessed by a prepaid account, and the fees and finance charges related thereto, should be reflected in these proposed summary totals of fees, deposits and debits for the prepaid account.

18(d) Modified Disclosure Requirements

The Bureau is proposing to extend the requirements in existing § 1005.18(c)(1) related to initial disclosures regarding access to account information and error resolution, and in existing § 1005.18(c)(2) regarding annual error resolution notices, to all prepaid accounts. The Bureau proposes to renumber existing § 1005.18(c)(1) and (2) as new § 1005.18(d)(1) and (2) for organizational purposes and to separate the modified requirements related to disclosures in existing § 1005.18(c)(1) and (2) from the modifications for limitations on liability and error resolution requirements in existing § 1005.18(c)(3) and (4). *See* section-by-section analysis of proposed § 1005.18(e). The Bureau proposes to adjust the internal cross-references in new § 1005.18(d) in light of the various paragraph numbering changes and other revisions proposed throughout § 1005.18.

EFTA section 905(a)(7) requires financial institutions to provide consumers with an annual error resolution notice. The annual error resolution notice provision for payroll card accounts in existing § 1005.18(c)(2) permits a financial institution, in lieu of providing an annual notice concerning error resolution, to include an abbreviated error resolution notice on or with each electronic and written history provided in accordance with existing § 1005.18(b)(1). Financial institutions providing periodic statements are similarly permitted to provide an abbreviated error resolution notice on or with each periodic statement pursuant to § 1005.8(b). The Bureau considered limiting the requirement to provide annual error resolution notices to only active and registered prepaid accounts, but given this existing alternative for providing an abbreviated notice with electronic and written history, the Bureau does not believe such a modification is necessary. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to propose an adjustment to the error resolution notice requirement of EFTA section 905(a)(7), to permit notices for prepaid accounts as described in proposed § 1005.18(d)(2), in order to facilitate compliance with error resolution requirements.

The Bureau requests comment on the application of these provisions for initial disclosures regarding access to account information and error resolution, and annual error resolution notices, to all prepaid accounts. Specifically, the Bureau seeks comment on whether financial institutions would face particular challenges in providing annual error resolution notices to all consumers using prepaid accounts, as well as whether it should require that annual error resolution notices be sent for prepaid accounts in certain circumstances, such as those accounts for which a consumer has not accessed an electronic history or requested in written history in an entire calendar year and thus would not have received any error resolution notice during the course of the year.

18(e) Modified Limitations on Liability and Error Resolution Requirements

EFTA section 908 governs the timing and other requirements for consumers and financial institutions pertaining to error resolution, including provisional credit. EFTA section 909 governs consumer liability for unauthorized electronic fund transfers. The Bureau is proposing to extend the Payroll Card Rule's limited liability provisions and error resolution provisions, including provisional credit, to all prepaid accounts. The Bureau also proposes to reorganize existing § 1005.18(c)(3) and (4) into proposed § 1005.18(e)(1) and (2) and to revise the paragraph headings for proposed § 1005.18(e), (e)(1) and (e)(2). Similar to the reorganization of existing § 1005.18(c)(1) and (2) above, these changes are proposed to simplify the organization of proposed § 1005.18 generally and to separate the modified requirements related to limited liability and error resolution from other modifications made for prepaid accounts.

As discussed below in the section-by-section analysis of proposed § 1005.18(e)(1), (2), and (3), the Bureau proposes to modify Regulation E's limited liability and error resolution timing requirements for prepaid accounts to accommodate how account information would be delivered by financial institutions choosing to follow the periodic statement alternative in proposed § 1005.18(c)(1) discussed above, and to exempt unverified prepaid accounts from the limited liability and error resolution requirements. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users and to facilitate compliance with its provisions, the Bureau believes it is necessary and proper to exercise its authority pursuant to EFTA section 904(c) to modify the timing requirements of EFTA section 909(a) and to except unverified prepaid accounts from the error resolution and limited liability requirements of EFTA sections 908 and 909 to the extent such accounts remain unverified.

18(e)(1) Modified Limitations on Liability Requirements

EFTA section 909 addresses consumer liability and is implemented in § 1005.6. For accounts under Regulation E generally, including payroll card accounts, § 1005.6(a) provides that a consumer may be held liable for an unauthorized electronic fund transfer resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met.[298] If the consumer provides timely notice to the financial institution within two business days of learning of the loss or theft of the access device, the consumer's liability is the lesser of $50 or the amount of unauthorized transfers made before giving notice. § 1005.6(b)(1). If timely notice is not given, the consumer's liability is the lesser of $500 or the sum of (1) the lesser of $50 or the amount of unauthorized transfers occurring within two business days of learning of the loss/theft and (2) the amount of unauthorized transfers that occur after two business days but before notice is given to the financial institution. § 1005.6(b)(2). Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement in order to avoid liability for subsequent transfers.

Existing § 1005.18(c)(3)(i) provides that, for payroll card accounts following the periodic statement alternative in existing § 1005.18(b), the 60-day period in § 1005.6(b)(3) for reporting

[298] The required disclosures for this purpose include a summary of the consumer's liability under § 1005.6, or under State law or other applicable law or agreement, for unauthorized electronic fund transfers; the telephone number and address of the person or office to be notified when the consumer believes an unauthorized transfer has been or may be made; and the financial institution's business days. *See* §§ 1005.6(a) and 1005.7(b)(1) through (3).

unauthorized transfers begins on the earlier of (1) the date the consumer electronically accesses his account under § 1005.18(b)(1)(ii), provided that the electronic history reflects the transfer, or (2) the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under § 1005.18(b)(1)(iii) in which the unauthorized transfer is first reflected. Alternatively, existing § 1005.18(c)(3)(ii) provides that a financial institution may comply with the requirements of § 1005.18(c)(3)(i) by limiting a consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account. The Bureau notes that this provision only modifies the 60-day period for consumers to report an unauthorized transfer and does not alter any other provision of § 1005.6.

In response to the Prepaid ANPR, the Bureau received few comments specifically regarding limited liability requirements. Most industry, trade association, and consumer advocacy group commenters suggested that GPR cards should generally be treated the same as payroll card accounts under Regulation E (except with respect to access to account information, discussed above, and provisional credit, discussed below). A few commenters, however, urged against extending protections for lost or stolen cards, arguing that there is a potential for abuse by some consumers, or suggested that modified liability provisions are needed to account for the increased risks they claimed are associated with prepaid products.

The Bureau's Study of Prepaid Account Agreements found that the vast majority of programs reviewed limit consumer liability in accordance with existing Regulation E provisions.[299] Similarly, CFSI found that all 18 programs in its review (representing an estimated 90 percent of the GPR card marketplace) had adopted the Payroll Card Rule's version of Regulation E error resolution and limited liability protections.[300]

The Bureau is proposing to extend to all prepaid accounts the existing limited liability provisions of Regulation E with modifications to the § 1005.6(b)(3) timing requirements in proposed § 1005.18(e)(1) for financial institutions following the periodic statement alternative in proposed § 1005.18(c)(1).[301] The text of proposed § 1005.18(e)(1) would update internal paragraph citations to reflect other numbering changes made in this proposal and add the word ''unauthorized'' to refer to the transfer discussed in proposed § 1005.18(e)(1)(i)(A) for consistency with usage elsewhere in proposed § 1005.18(e)(1), but otherwise would remain unchanged from existing § 1005.18(c)(3). Related commentary is discussed below in the section-by-section analysis of proposed § 1005.18(e)(2). The Bureau notes that this proposal does not modify the requirement to comply with existing § 1005.6(b)(4), regarding an extension of time limits if a consumer's delay in notifying the financial institution was due to extenuating circumstances, nor any other provisions of § 1005.6. As discussed above, this proposed revision is authorized under EFTA section 904(c). The Bureau seeks comments on all aspects of this part of the proposal.

18(e)(2) Modified Error Resolution Requirements

Overview of Existing Requirements

EFTA section 908 governs the timing and other requirements for consumers and financial institutions on error resolution, including provisional credit, and is implemented for accounts under Regulation E generally, including payroll card accounts, in § 1005.11. Section 1005.11(c)(1) and (3)(i) requires that a financial institution, after receiving notice that a consumer believes an electronic fund transfer from the consumer's account was not authorized, must investigate promptly and determine whether an error occurred (*i.e.,* whether the transfer was unauthorized), within ten business days (20 business days if the electronic fund transfer occurred within 30 days of the first deposit to the account). Upon completion of the investigation, the financial institution must report the investigation's results to the consumer within three business days. After determining that an error occurred, the financial institution must correct an error within one business day. *See* § 1005.11(c)(1). Under EFTA section 909(b), the burden of proof is on the financial institution to show that an alleged error was in fact an authorized transaction; if the financial institution cannot establish proof of valid authorization, the financial institution must credit the consumer's account.

Existing § 1005.11(c)(2) provides that if the financial institution is unable to complete the investigation within ten business days, its investigation may take up to 45 days if it provisionally credits the amount of the alleged error back to the consumer's account within ten business days of receiving the error notice.[302] Provisional credit is not required if the financial institution requires but does not receive written confirmation within 10 business days of an oral notice by the consumer. § 1005.11(c)(2)(i)(A). If the investigation establishes proof that the transaction was, in fact, authorized, the financial institution may reverse any provisional credit previously extended (assuming there are still available funds in the account). § 1005.11(d)(2).

Existing § 1005.18(c)(4) provides that, for payroll card accounts following the periodic statement alternative in existing § 1005.18(b), the period for reporting an unauthorized transaction is tied, in part, to the date the consumer electronically accesses the consumer's account pursuant to existing § 1005.18(b)(1)(ii), provided that the electronic account history reflects the transfer at that time, or the date the financial institution sends a written history of the consumer's account transactions requested by the consumer pursuant to existing § 1005.18(b)(1)(iii) in which the unauthorized transfer is first reflected. The Bureau notes that this provision only modifies the 60-day period for consumers to report an error and does not alter any other provision of § 1005.11.

As discussed above, the FMS Rule requires that the issuer of a prepaid card that receives a Federal payment must

[299] The Study of Prepaid Account Agreements found that across all prepaid account agreements reviewed, 88.92 percent provided full limited liability; 8.31 percent partially limited consumers' liability; and 2.77 percent did not appear to provide consumers with any limited liability protections. Excluding agreements for payroll card and government benefit card programs (100 percent of each provided full limited liability protections), 88.02 percent of agreements for GPR card programs and 64.28 percent of all other programs' agreements provide full limited liability protections to consumers. See Study of Prepaid Account Agreements, at 16 tbl. 4.

[300] Ctr. for Fin. Services Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 12 (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.*

[301] The Bureau is proposing an additional modification in proposed § 1005.18(e)(3), discussed below, to provide an exception to the requirement to provide limited liability protection when a financial institution has not completed collection of consumer identifying information and identity verification for a prepaid account, assuming notice of the risk of not registering the prepaid account has been provided to the consumer.

[302] The financial institution has 90 days (instead of 45) if the claimed unauthorized electronic fund transfer was not initiated in a state, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made. § 1005.11(c)(3)(ii).

comply with the error resolution and provisional credit requirements for payroll cards accounts in Regulation E. *See* 31 CFR 210.5(b)(5). The Bureau understands that prepaid cards that receive Federal payments and, as discussed previously, by extension many other prepaid cards that are eligible to receive Federal payments if the consumer so chooses, already comply with these provisions.

Comments Received and Other Industry Outreach

In response to the Prepaid ANPR, industry, trade associations, and consumer groups were nearly unanimous in their support for extending Regulation E error resolution requirements to prepaid cards. Those industry commenters that disagreed suggested, however, that the Bureau should not extend Regulation E limited liability and error resolution provisions to prepaid products, arguing that consumers should assume some liability for fraud or stolen PINs in certain situations where the consumer acted negligently. One credit union argued that increasing protections for prepaid cards decreases the incentive for consumers to establish checking and savings accounts. Other commenters suggested that, if prepaid cards were covered under Regulation E at all, the Regulation should be modified to generally match existing industry practices rather than requiring financial institutions to change products in ways that commenters said could cause fees to increase, thus making these products more expensive for consumers.

Several industry and trade association commenters requested that the Bureau shorten any time frame for consumers to report unauthorized transactions to 60 days from the date the transaction is posted to the consumer's account, arguing that a longer period is not necessary given consumers' readily available access to online account information. These parties also pointed out that, when consumers significantly delay reporting unauthorized transactions to their financial institution, it can be costly and difficult for the institution to investigate. Others argued that ten business days is too short a period in which to investigate errors before extending provisional credit and that time period should be extended to at least 20 business days or longer.

Commenters were varied in their suggested approaches with respect to provisional credit. Some program managers, in comment letters responding to the Bureau's Prepaid ANPR as well as in other outreach conducted by the Bureau, have expressed concern about extending provisional credit to all prepaid card accounts, asserting that the potential fraud losses would be unsustainable. Specifically, they contend that cardholders intending to take advantage of the rules can make a purchase or withdraw cash at an ATM, assert that an error has occurred, obtain provisional credit (because many claims take most providers more than ten or even 20 business days to resolve), spend down those funds, and abandon the card before the provider is able to complete its investigation. Industry commenters argued that prepaid cards may have higher incidences of fraudulently-asserted errors than other types of accounts for a number of reasons, including that prepaid cards are often purchased anonymously; prepaid cards are easier to abandon and are more often abandoned (by quickly spending down the balance and discarding the card); consumers may not have any other ongoing relationship with the issuing bank or program manager; and fraud is less likely when a consumer's paycheck or employer is implicated (*e.g.,* in accounts receiving direct deposit), whether those funds are being sent to a prepaid account, payroll card account, or other consumer asset account under Regulation E. As noted above, EFTA places the burden of proof on the financial institution to show that an alleged error was, in fact, an authorized transaction.

Nevertheless, consumer advocates and some industry commenters argued that many prepaid accounts are used in substantially similar ways as traditional consumer asset accounts and thus consumers using prepaid accounts should receive protections for funds lost due to unauthorized use in the same timeframe as holders of other accounts covered by Regulation E. Consumer advocates repeatedly emphasized how important provisional credit can be for consumers, noting that many consumers who use prepaid cards have limited liquid assets and may put a substantial portion of those assets on their prepaid cards. Without provisional credit, if those funds are lost due to an unauthorized transfer, a consumer could be without those funds—most of their assets—for the duration of the financial institution's investigation (up to 45 days, or 90 days in certain circumstances). Consumer advocates contended that provisional credit may be particularly important to prepaid account users because they may be less likely to have access to other funds.

Study of Prepaid Account Agreements Regarding Error Resolution and Provisional Credit

As discussed previously, the Bureau conducted its Study of Prepaid Account Agreements to better understand how providers of prepaid accounts would be affected by a requirement they offer error resolution with provisional credit. In this Study, the Bureau analyzed prepaid account terms and conditions to determine current industry practices in a number of areas, including with respect to error resolution and provisional credit. The Bureau found that across all agreements reviewed, 77.85 percent provided full error resolution with provisional credit protections, 12.31 percent provided error resolution with limitations on provisional credit; 9.23 percent provided error resolution without provisional credit; and 0.62 provided no error resolution protections.[303] Because these statistics weight all agreements equally, and thus do not reflect individual programs' or providers' market shares, the Bureau also specifically analyzed the 22 agreements for GPR card programs in the Study that belong to five of the largest program managers in the GPR card market (which together constituted 81 percent of the market by load volume and 72.2 percent market share based on number of active cards as of late 2012 [304]). The Bureau found that 17 of these agreements provide full error resolution protections with provisional credit, three provide error resolution with limitations on provisional credit, and two provide error resolution without provisional credit.[305]

Similarly, as noted above, CFSI found that all cards reviewed, representing an estimated 90 percent of the GPR card marketplace, had adopted the Payroll Card Rule's version of Regulation E's error resolution and limited liability protections.[306]

Apart from the relevant provisions in Regulation E, the Bureau notes that the four major payment card networks' rules all impose some form of zero liability protections for cardholders in certain circumstances. At least one network, for

[303] *See* The Study of Prepaid Account Agreements, at 13 tbl. 3.

[304] Aite Group LLC, *The Contenders: Prepaid Debit and Payroll Cards Reach Ubiquity,* at 17, 23 (Nov. 2012).

[305] *See* The Study of Prepaid Account Agreements, at 13 tbl. 3.

[306] Ctr. for Fin. Services Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles, at 12* (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.*

example, requires provisional credit to be given after five days (rather than ten) for unauthorized transactions occurring over its network, unless certain exceptions apply.

Proposal

The Bureau is proposing to extend to all prepaid accounts the error resolution provisions of Regulation E, including provisional credit, with modifications to the § 1005.11 timing requirements in proposed § 1005.18(e)(2) for financial institutions following the periodic statement alternative in proposed § 1005.18(c)(1).[307] The text of proposed § 1005.18(e)(2) updates internal paragraph citations to reflect other numbering changes made in this proposal, but otherwise remains unchanged from existing § 1005.18(c)(4). As discussed above, EFTA section 904(c) authorizes this proposed revision.

The Bureau is proposing to extend to all prepaid accounts existing comment 18(c)–1 regarding the error resolution safe harbor provision, renumbered as new comment 18(e)–1 and with references to payroll card accounts changed to prepaid accounts. The Bureau is also proposing to extend existing comment 18(c)–2 to all prepaid accounts, with one substantive modification, renumbered as new comment 18(e)–2, and with the reference to payroll card account changed to prepaid account. This comment currently provides, in part, that a consumer is deemed to have accessed a payroll card account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity. The Bureau proposes to add language to the comment to make clear that access to account information via a mobile application, as well as through a web browser, would constitute electronic access to an account for purposes of the timing provisions in proposed § 1005.18(e)(1) and (2). The existing comment also explains that an institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under §§ 1005.6 and 1005.11. To further clarify this, the Bureau proposes to add an additional sentence to the end of proposed comment 18(e)–2 to explain that a consumer is not deemed to have accessed a prepaid account electronically when the consumer receives an automated text message or other automated account alert, or checks the account balance by telephone.

The Bureau is proposing to extend existing comment 18(c)–3, regarding untimely notice of error by a consumer, to all prepaid accounts, renumbered as new comment 18(e)–3 and with internal paragraph citations updated to reflect other numbering changes made in this proposal. The last sentence of the comment currently provides that where the consumer's assertion of error involves an unauthorized EFT, the institution must comply with § 1005.6 before it may impose any liability on the consumer. The Bureau is proposing to specifically note that compliance with § 1005.6 includes compliance with the extension of time limits provided in § 1005.6(b)(4).

The Bureau seeks comments on all aspects of its proposal for new § 1005.18(e)(2) and related commentary. In particular, the Bureau requests comment on whether there is an alternative approach to error resolution that the Bureau should adopt for prepaid accounts. The Bureau also seeks comment on whether error resolution with provisional credit is appropriate for all, or only certain, prepaid accounts, and whether there are any indicators that financial institutions use that might adequately predict the validity of a particular error claim, which might inform the Bureau's application of error resolution requirements to all prepaid accounts.

The Bureau also seeks comment on whether there might be any other consequences to extending the requirement for error resolution with provisional credit to all prepaid accounts. In particular, the Bureau seeks comment on what impact the concern for increased fraud losses (or the potential therefor) might have on financial institutions' eligibility requirements and initial screening processes for new prepaid accountholders. The Bureau also seeks comment on whether institutions might become more apt to close accounts that have asserted error claims, and whether and how these factors might result in decreased access to financial products for consumers.

Alternative Approaches Considered by the Bureau

In light of the various concerns raised in comment letters received in response to the Prepaid ANPR and during the Bureau's outreach to industry and consumer groups, the Bureau recognizes that provisional credit can be important to consumers, but also that there could be an increased risk of fraud by cardholders who might be unscrupulous and might be able to take advantage of a comprehensive provisional credit rule. Thus, the Bureau considered a number of alternatives to extending full provisional credit to all prepaid accounts. For example, the Bureau considered whether provisional credit should be limited only to prepaid accounts receiving payroll or government payments, those that have received some form of direct deposit within a certain period, such as 30 days, those that have been opened for a certain amount of time, or those that maintained a balance over a certain threshold prior to the alleged error, among other things.

Any of these factors could potentially limit provisional credit fraud, although each has drawbacks. For example, even though providers indicated that a claim for an unauthorized transaction in the first few days after account opening is more likely to be fraudulent than claims on older accounts, consumers seeking to commit fraud could simply wait the designated period of time before asserting an error claim and seeking provisional credit if the Bureau were to require provisional credit only for prepaid accounts of a certain age. At the same time, honest consumers would be without key protections during that time period. Another approach would be to limit provisional credit to prepaid accounts that receive some form of direct deposit because consumers who receive wage or benefit payments on a card may be less likely to risk that payment to commit fraud. Ultimately, however, the Bureau believes the protection offered by this approach would potentially be too narrow because many consumers using prepaid accounts receive wages in forms other than direct deposit (such as those that receive their wages or tips in cash) and would not be able to receive provisional credit under such a standard. It would similarly leave consumers who do not receive any wage or benefit payments into their prepaid accounts unprotected.

The Bureau seeks comment on whether there are any other alternatives to or potential limits on provisional credit that might contain fraud losses for

[307] The Bureau is proposing an additional modification in proposed § 1005.18(e)(3), discussed below, to provide an exception to the requirement to provide error resolution when a financial institution has not completed collection of consumer identifying information and identity verification for a prepaid account, assuming appropriate notice of the risk of not registering the prepaid account has been provided to the consumer.

institutions while adequately protecting consumers from harm.

18(e)(3) Limitations on Liability and Error Resolution for Unverified Accounts

To further the purposes of EFTA, the Bureau believes it is necessary and proper to propose to use its exceptions authority under EFTA section 904(c) to add new section § 1005.18(e)(3). This proposed provision would provide that for prepaid accounts that are not payroll card accounts or government benefit accounts, if a financial institution discloses to the consumer the risks of not registering a prepaid account using a notice that is substantially similar to the proposed notice contained in paragraph (c) of appendix A–7, a financial institution is not required to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account for which it has not completed it collection of consumer identifying information and identity verification.[308] However, once the consumer's identity has been verified, a financial institution must limit the consumer's liability for unauthorized EFTs and resolve any errors that occurred prior to verification subject to the timing requirements of existing §§ 1005.6 or 1005.11, or the modified timing requirements in proposed § 1005.18(e), as applicable.

Proposed comment 18(e)–4 would explain that for the purpose of compliance with proposed § 1005.18(e)(3), consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number. Comment 18(e)–4 would also explain that for an unauthorized transfer or an error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or alleged error is based on the date the consumer contacts the financial institution to report the unauthorized transfer or alleged error, not the date the financial institution completes its customer identification and verification process. Comment 18(e)–4 would further explain that for an error asserted on a previously unverified prepaid account, the time limits for a financial institution's investigation of errors pursuant to § 1005.11(c) begin on the day following the date the financial institution completed its customer identification and verification process. A financial institution may not delay completing its customer identification and verification process, or refuse to verify a consumer's identity, based on the consumer's assertion of an error.

The Bureau understands that financial institutions often conduct customer identification and verification at the onset of a relationship with a consumer, such as at the time a consumer signs up to receive wages via a payroll card account or when a consumer requests a GPR card online. For GPR cards purchased at retail stores, the financial institution may—but does not always—obtain customer-identifying information and perform verification at the time the consumer calls or goes online to activate the card. Because of restrictions imposed by FinCEN's Prepaid Access Rule (31 CFR 1022.210(d)(1)(v)) and the payment card networks' operating rules, among other things, the Bureau understands that customer identification and verification is almost always performed before a card can be reloaded, used to make cash withdrawals, or used to receive cash back at the point of sale. The Bureau believes that providers thus have an incentive to encourage consumers to register their cards to increase the functionality and thus the longevity of the consumer's use of the account.

Collection of consumer identifying information and verification of identity under proposed § 1005.18(e)(3) would include information collected, and identities verified, by a financial institution directly as well as by a service provider or agent of the institution. Thus, the Bureau expects that financial institutions providing prepaid accounts for purposes such as student financial aid disbursements or property or casualty insurance payments would likely not be able to avail themselves of the exclusion in § 1005.18(e)(3) because consumer identifying information is collected and consumers' identities verified by the financial institution, or a service provider or agent of the institution, prior to distribution of such prepaid accounts. The Bureau solicits comment on the proposed exclusion and on what other types of prepaid account products might be eligible for it, and whether the exclusion should be applied more broadly or limited only to certain types of prepaid account products such as those sold anonymously at retail locations.

The Bureau is proposing to adopt this exemption because it understands that financial institutions may face difficulties in determining whether an unauthorized transaction occurred if it does not know a prepaid accountholder's identity. For example, a financial institution might have a video recording provided by a merchant or ATM operator showing the card user, but without having identified the accountholder, it would have no way of knowing if the individual conducting the transaction is authorized to do so.

The Bureau believes that financial institutions would follow the customer identification and verification requirements set forth in FinCEN's customer identification program requirements for banks in 31 CFR 1020.220 or for providers and sellers of prepaid access in 31 CFR 1022.210(d)(1)(iv).

The Bureau anticipates that when a consumer calls to assert an error on an unverified account, the financial institution would inform the consumer of its policy regarding error resolution on unverified accounts and would begin the customer identification and verification process at that time. As noted previously, the Bureau believes that providers have an incentive to encourage consumers to register their cards to increase the functionality and thus the longevity of the consumer's use of the account.

The Bureau seeks comment on all aspects of this part of its proposal, including whether FinCEN's regulations, as discussed above, are the appropriate standard to use for identification and verification of prepaid accountholders, or whether some other standard should be used. The Bureau also seeks comment on whether error resolution should be required even for unidentified or unverified accounts or whether, for such accounts, the Bureau should exercise its exceptions authority under EFTA to change the burden of proof from the financial institution to the accountholder in such circumstances rather than eliminate error resolution rights altogether. Such a change might add protections for consumers in particular circumstances, such as if their initial cash load amount does not match the amount actually credited to their prepaid account. (For example, if the consumer were to load $100 cash, but their online account balance shows only $10.) The Bureau seeks comment on the proportion of prepaid accounts for which customer identification and verification is either never performed or is attempted but cannot be completed. The Bureau also seeks comment on whether such accounts should receive error resolution protections but without requiring financial institutions to grant provisional credit.

[308] Relatedly, the Bureau is proposing to require that financial institutions include on the short form disclosure for all prepaid accounts a statement emphasizing the importance of registering the prepaid account. *See* section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*12*).

The Bureau believes that it is unlikely that a financial institution would seek to avoid completion of the identification and verification process in order to refuse to address an error asserted by a consumer given the potential benefits to the institution associated with having a consumer complete the identification and verification process. However, the Bureau seeks comment on whether such evasion is likely to occur and whether the Bureau should impose a time limit for completion of the customer identification and verification process.

18(f) Initial Disclosure of Fees and Other Key Information

The Bureau is proposing § 1005.18(f), which would modify the initial disclosure of fees requirement in § 1005.7(b)(5) for prepaid accounts. EFTA section 905(a)(4) requires financial institutions to disclose to consumers, as part of the account's terms and conditions, any charges for electronic fund transfers or for the right to make such transfers. Existing § 1005.7(b)(5) implements this requirement by stating that, as part of the initial disclosures, any fees imposed by a financial institution for electronic fund transfers or for the right to make transfers must be disclosed. Existing comment 7(b)(5)–1 further clarifies that other fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may, but need not, be disclosed. The Bureau believes that for prepaid accounts, however, it is important that the initial account disclosures provided to consumers list all fees that may be imposed in connection with the prepaid account. The Bureau believes that because these disclosures are what consumers will likely reference throughout their ongoing use of their prepaid accounts, it is important that these disclosures include all relevant fee information, not just those fees related to electronic fund transfers.

Thus, to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to propose an adjustment of the requirement in EFTA section 905(a)(4), which is implemented in existing § 1005.7(b)(5), for prepaid accounts. In addition, the Bureau believes that disclosure of all fees for prepaid accounts will, consistent with Dodd-Frank Act section 1032(a), ensure that the features of prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with a prepaid account. Specifically, the Bureau is proposing § 1005.18(f), which would require that in addition to disclosing any fees imposed by a financial institution for electronic fund transfers or the right to make such transfers, the financial institution must also include in its initial disclosures given pursuant to § 1005.7(b)(5) all other fees imposed by the financial institution in connection with a prepaid account. For each fee, a financial institution must disclose the amount of the fee, the conditions, if any, under which the fee may be imposed, waived, or reduced, and, to the extent known, whether any third party fees may apply.

The Bureau believes that most providers are already disclosing all fees in the terms and conditions accompanying prepaid accounts. Further, the Bureau notes that Regulation DD, which implements TISA, requires that initial disclosures for deposit accounts include the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed. § 1030.4(b)(4).

The Bureau is further proposing that these disclosures pursuant to proposed § 1005.18(f) include all of the information required to be disclosed pursuant to § 1005.18(b)(2)(ii)(B) and must be provided in a form substantially similar to Sample Form A–10(e). The Bureau believes that for consistency purposes and to facilitate consumer understanding of a prepaid account's terms, it is useful for the fee disclosure provided pursuant to § 1005.7(b)(5), as modified by proposed § 1005.18(f), to be in the same format of the long form disclosure requirement of proposed § 1005.18(b)(2)(ii)(A).

The Bureau seeks comment on this portion of the proposal.

18(g) Credit Card Plans Linked to Prepaid Accounts

Proposed § 1005.18(g)(1) would set forth timing rules related to when a credit card plan under Regulation Z could be linked to a prepaid account. Proposed § 1005.18(g)(2) would set forth rules related to the terms applicable to the prepaid account when a credit card plan is linked to a prepaid account.

18(g)(1) Prohibitions

Proposed § 1005.18(g)(1) generally would restrict financial institutions that establish or hold prepaid accounts from linking a credit card plan under Regulation Z to a prepaid account, or allowing the prepaid account to be linked to such a credit card plan, until 30 calendar days after the prepaid account has been registered. Proposed § 1005.18(g)(1)(i) would restrict financial institutions that establish or hold prepaid accounts from providing solicitations or applications to holders of prepaid accounts to open credit card accounts subject to Regulation Z, prior to 30 calendar days after the prepaid accounts have been registered. For purposes of proposed § 1005.18(g)(1), the term *solicitation* would mean an offer by the person to open a credit or charge card account subject to Regulation Z that does not require the consumer to complete an application. A ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card would be a solicitation for purposes of proposed § 1005.18(g)(1).

Proposed § 1005.18(g)(1)(ii) would restrict financial institutions that establish or hold prepaid accounts of consumers from allowing prepaid access devices to access credit card plans subject to Regulation Z that would make the prepaid access devices into credit cards at any time prior to 30 calendar days after the prepaid accounts have been registered. Proposed § 1005.18(g)(1)(iii) would restrict financial institutions that establish or hold prepaid accounts of consumers from allowing credit extensions from credit card plans subject to Regulation Z to be deposited in prepaid accounts, where the credit plans are accessed by account numbers that are credit cards under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, prior to 30 calendar days after the prepaid account has been registered. Proposed § 1005.18(g)(1)(iii) is intended to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the open-end account using an account number only, and (3) the advance is deposited into the prepaid account. Proposed comment 18(g)–1 would cross reference provisions in Regulation Z that would provide guidance on when a program constitutes a credit plan (*see* proposed § 1026.2(a)(20) and comment 2(a)(20)–2.ii) and would provide guidance on when an access device for a prepaid account is a credit card and when an account number is a credit card where extensions of credit are

permitted to be deposited directly only into particular prepaid accounts specified by the creditor (*see* § 1026.2(a)(15)(i), proposed § 1026.2(a)(15)(vii), and proposed comment 2(a)(15)–2.i.F and .G).

Proposed § 1005.18(g)(1) would complement a similar proposed provision in Regulation Z, proposed § 1026.12(h), which would require credit card issuers to wait at least 30 calendar days after the prepaid account has been registered before the card issuer may provide a solicitation or an application to the holder of the prepaid account to open a credit or charge card account that will be accessed by the prepaid card that is a credit card under Regulation Z, or by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

The Bureau is proposing § 1005.18(g)(1) pursuant to its authority under sections 904(a), 904(c), and 905(a) of EFTA (15 U.S.C. 1693b) and Dodd-Frank Act section 1032(a). The Bureau believes that proposed § 1005.18(g)(1) is necessary and proper to effectuate the express purposes of EFTA to provide a framework to establish the rights, liabilities and responsibilities of prepaid account users by helping consumers understand the terms of their prepaid accounts and that credit card plans linked to the prepaid accounts are optional. Under the Bureau's proposal and as discussed above, a consumer's registration of a prepaid account would be a critical step for obtaining Regulation E's consumer rights and protections with respect to the account, and the Bureau's proposal to restrict financial institutions from offering credit features to holders of prepaid accounts until 30 days after the accounts have been registered seeks, in part, to ensure that consumers understand that they are not required to request any credit feature in order to register and use a prepaid account.

The Bureau is also proposing to adopt this provision because a consumer's decision of which prepaid account to purchase, register, and use is itself a complex decision involving several variables, including the consumer's finances and purchasing habits. If the consumer makes a choice that does not ultimately prove to be a good fit, it is relatively easy for that consumer to acquire a different prepaid account (to the extent that account does not have a credit feature). The Bureau believes that this dynamic has fostered a competitive market, and it is concerned that combining decisions on prepaid accounts and credit features would tend to undermine that in at least two ways. First, it makes the acquisition of the prepaid account even more complex by adding more variables to consider; as noted previously, consumers may spend little time shopping for a prepaid card. Second, the presence of a credit feature may make it harder for consumers to terminate their account relationships if consumers can incur significant debts before having a chance to determine how the prepaid account itself is performing.

The Bureau's proposal seeks to keep that decision separate from a consumer's decision whether to add a credit feature to the prepaid account, which involves numerous additional variables that the consumer should consider. The two decisions in combination could cause consumers to make incorrect or suboptimal decisions. The Bureau is particularly concerned that the events of purchasing, registering, and adding a credit feature to a prepaid account could become conflated for prepaid accounts that consumers obtain on the Internet, because in that context the events could occur close together in time. In particular, the Bureau believes that the proposed 30-day waiting period would, consistent with Dodd-Frank section 1032(a), ensure that the features of the prepaid account and any credit card feature that might become connected to it are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account. The Bureau believes that a consumer should have the opportunity to assess the features of a prepaid account by means of actually using it before being offered a credit feature that might make it more difficult for the consumer to terminate the prepaid account relationship due to outstanding credit balances.

As discussed in the section-by-section analysis of Regulation Z § 1026.12(a)(1), under the proposal, a credit card feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with proposed § 1026.12(h). Proposed § 1026.12(h) would require credit card issuers to wait at least 30 calendar days after the prepaid account has been registered before the card issuer may open a credit card account for the holder of a prepaid account, or may provide a solicitation or an application to the holder of the prepaid account to open a credit or charge card account, that will be accessed by the prepaid card that is a credit card under Regulation Z or by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

The Bureau believes that Regulation E proposed § 1005.18(g)(1) and Regulation Z proposed § 1026.12(h), taken together, would promote the informed use of the prepaid account and the credit card account by separating the decision to purchase and register a prepaid account from the decision to accept an offer to link a credit card account to that prepaid account. By separating these decisions, § 1005.18(g)(1) would better allow consumers to focus on the terms and conditions that apply to the prepaid account at the time of purchase and registration which may enable the consumer to better understand those terms and conditions, consistent with EFTA section 905(a) which requires financial institutions to disclose the terms and conditions of electronic fund transfers involving a consumer's account. The Bureau also believes that requiring at least 30 calendar days to elapse between the registration of a prepaid account and any offer of a linked credit or charge card account would enhance consumer understanding of the terms of the prepaid account and would help consumers to make more informed decisions regarding linking a credit or charge card account the prepaid account. Otherwise, the Bureau fears that consumers could believe that they are required to request that the credit or charge card account be linked to the prepaid account in order to register or access the prepaid account.

The Bureau recognizes that this provision would be unique to prepaid accounts. *Compare* existing 1005.17(c). Nevertheless and for the reasons discussed above, the Bureau believes that it is particularly important to separate these two decisions for prepaid accounts and related overdraft services and credit features. The Bureau solicits comment on this provision. The Bureau also solicits comment on the 30 day time frame, and whether a shorter or longer time frame would better accomplish the goals of the provision.

The Bureau notes that proposed § 1005.18(g)(1) and Regulation Z § 1026.12(h) would overlap in cases where the credit card plan is accessed by a prepaid card or the credit card plan is being offered by a financial institution that holds the prepaid account and is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In those cases, the financial

institution would be a ''card issuer'' under Regulation Z § 1026.2(a)(7) [309] and the Bureau is proposing that both the requirements of proposed Regulation Z § 1026.12(h) and proposed Regulation E § 1005.18(g)(1) would apply to the financial institution who also is a card issuer. Nonetheless, the Bureau intends proposed Regulation E § 1005.18(g)(1) and Regulation Z § 1026.12(h) to impose the same restrictions in those situations. In cases where the credit card account is being offered by a person other than the person who holds the prepaid account and is being accessed by an account number as described above, the person issuing the account number that is a credit card (*i.e.,* card issuer) must comply with proposed Regulation Z § 1026.12(h). In addition, the financial institution that holds the prepaid account must comply with Regulation E § 1026.18(g)(1). The Bureau believes that imposing complementary restrictions on both the card issuer that is offering the credit card account and the financial institution that holds the prepaid account would prevent circumvention of the prohibition, and help ensure that consumers' decisions whether to open a credit card account linked to the prepaid account are separate from when the prepaid account is purchased or registered, in order to enable consumers to understand better the terms and conditions that apply to the prepaid account, consistent with EFTA section 905(a) which requires financial institutions to disclose the terms and conditions of electronic fund transfers involving a consumer's account.

18(g)(2) Requirements

Proposed § 1005.18(g)(2) would set forth rules related to the terms applicable to the prepaid account when a credit card plan is linked to a prepaid account. Specifically, proposed § 1005.18(g)(2) would provide that where a credit card plan subject to Regulation Z may be offered at any point to the consumer with respect to a prepaid account that is accessed by an access device for the prepaid account where the access device is a credit card under Regulation Z or is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a financial institution that establishes or holds such a prepaid account may not apply different terms and conditions to a consumer's account that do not relate to an extension of credit, carrying a credit balance, or credit availability, depending on whether the consumer elects to link such a credit card plan to the prepaid account.

Proposed comment 18(g)–2.i would provide guidance on the applicability of the restriction in proposed § 1005.18(g)(2). Specifically, proposed comment 18(g)–2.i would explain that a financial institution may offer different terms on different prepaid account products, where the terms may differ between a prepaid account product where a credit card plan subject to Regulation Z cannot be linked to the prepaid account, and a prepaid account product where a credit card plan subject to Regulation Z can be linked to the prepaid account. Nonetheless, on the prepaid account product where a credit card plan subject to Regulation Z may be offered at any point to the consumer that is accessed by an access device for the prepaid account that is a credit card under Regulation Z or is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a financial institution that establishes or holds such a prepaid account may not apply different terms and conditions to a consumer's account that do not relate to an extension of credit, carrying a credit balance, or credit availability, depending on whether the consumer elects to link such a credit card plan to the prepaid account. Proposed comment 18(g)–2.ii explains that § 1005.18(g)(2) prevents a financial institution from waiving fees or reducing the amount of fees that do not relate to an extension of credit, carrying a credit balance, or credit availability if the consumer elects to link the prepaid account to a credit card plan.

Proposed comment 18(g)–2.ii would provide examples of account terms and conditions that would be subject to the restrictions in proposed § 1005.18(g)(2). The proposed examples in comment 18(g)–2.ii include fees assessed on the prepaid account that do not relate to an extension of credit, carrying a credit balance, or credit availability, including any transaction fees for transactions that are completely funded by the prepaid account and any one-time or periodic fees imposed for opening or holding a prepaid account. The proposed comment also would cross reference Regulation Z proposed § 1026.4(b)(2) and comment 4(b)(2)–1.iii and .iv, which provide additional guidance on fees that relate to an extension of credit, carrying a credit balance or credit availability. Proposed comment 18(g)–2.iii also would provide examples of account terms and conditions that are not subject to the restrictions in proposed § 1005.18(g)(2) because these terms and conditions would relate to an extension of credit, carrying a credit balance, or credit availability. The proposed examples would include (1) fees or charges assessed on the prepaid account applicable to transactions that access the credit card plan subject to Regulation Z, including transaction fees for transactions that either access just the credit card plan, or access both the prepaid account and the credit card plan; and (2) any one-time or periodic fees imposed for the issuance or availability of the credit card plan subject to Regulation Z. Proposed comment 18(g)–2.iv provides examples that illustrate the prohibition in proposed § 1005.18(g)(2).

The Bureau is proposing § 1005.18(g)(2) pursuant to its authority under EFTA sections 904(a) and (c). In implementing its overdraft opt-in rule under § 1005.17, the Board required that ''[a] financial institution shall provide to consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions.'' § 1005.17(b)(3). The Board recognized that without this requirement, ''some institutions could otherwise effectively compel the consumer to provide affirmative consent to the institution's payment of overdrafts for ATM and onetime debit card transactions by providing consumers who do not opt in with less favorable terms, conditions, or features than consumers who do opt in.'' [310] The Bureau believes that the same requirement should be extended here for the same reasons. As discussed in the section-by-section analysis of Regulation Z § 1026.12(a)(1), under the proposal, a credit card feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with proposed § 1026.12(h), which would require credit card issuers to wait at least 30 calendar days after the prepaid account has been registered before the

[309] Under the proposal, with respect to a prepaid card that is a credit card where the card accesses a credit plan that is offered by a third party, a person offering the credit plan that is accessed by the prepaid card would be an agent of the person issuing the prepaid card and thus, would be a card issuer with respect to the prepaid card that is a credit card. *See* Regulation Z proposed comment 2(a)(7)–1.ii. In this case, both the person offering the credit plan and the financial institution issuing the prepaid card would be card issuers under Regulation Z § 1026.2(a)(7).

[310] 74 FR 59033, 59044 (Nov. 17, 2009).

card issuer may open a credit or charge card account, or provide a solicitation or an application to the holder of the prepaid account to open a credit or charge card account, that will be accessed by the prepaid card that is a credit card under Regulation Z or an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

The Bureau believes some institutions could otherwise effectively compel the consumer to request a credit card plan be linked to the prepaid account as described above by providing consumers who do not make such a request with less favorable terms, conditions, or features than consumers who do make such requests. For example, an institution could waive the monthly fee for holding a prepaid account for consumers who request that the credit card plan be linked to the prepaid account, but not waive the monthly fee for consumers who do not make such a request.

18(h) Compliance Dates

The Bureau is proposing that all prepaid accounts comply with the requirements of EFTA and Regulation E, as modified by proposed § 1005.18, within nine months of publication of the Bureau's final rule in the **Federal Register**. This nine month effective date would apply to disclosures for newly-manufactured prepaid account materials and disclosures or other information delivered to consumers online or by telephone. The Bureau is proposing a delayed effective date for prepaid account packaging, access devices, and other printed materials that were created prior to the nine-month effective date, so that immediate removal or destruction of unsold or undistributed prepaid account packaging, access devices, or other physical materials created prior to the nine month effective date would not be mandated. However, within 12 months of publication of the Bureau's final rule in the **Federal Register**, all prepaid accounts would have to comply fully with the requirements of the rule including its disclosure requirements, regardless of when the physical packaging, access devices, or other physical materials on which such disclosures appear were created.

The Bureau addresses its proposed effective date in two places. The effective date for proposed § 1005.18 is discussed in this section (a cross-reference to the proposed § 1005.18(h) effective date appears in proposed § 1005.15(c) for pre-acquisition disclosure requirements for government benefit accounts) while the effective date for the rest of this proposal is discussed in the Effective Date section at the conclusion of the section-by-section analysis.

Comments Received and Stakeholder Outreach Regarding Effective Date

In determining the appropriate effective date to propose for this rule, the Bureau considered comments submitted in response to the Prepaid ANPR and also conducted further outreach and research. In the Prepaid ANPR, the Bureau stated that one of its goals was to be mindful of avoiding any unnecessary burden on industry. The Bureau also asked a series of specific questions related to how market participants manage their prepaid product inventory: (1) Through what methods, and under what circumstances, do market participants communicate a change of contract terms, or other information, to cardholders?; (2) Are there inventory replacement cycles that drive the printing of cards to stock distribution outlets?; (3) Do market participants conduct periodic maintenance of systems during which updating compliance systems would impose less of a burden? If so, how often does this maintenance occur?; and (4) Are there other issues with respect to the cost of regulatory compliance about which the Bureau should be aware? [311]

In response, a number of industry commenters noted that mandating too short an implementation transition period to comply with new disclosure requirements would result in financial institutions having to remove, replace, and destroy existing inventory. These commenters contended that such logistical procedures would be quite burdensome and costly. Some commenters also noted the potential adverse environmental impact that could stem from a short implementation period resulting in the destruction of large quantities of unused products rendered unsaleable or undistributable by virtue of new rules.

Industry commenters instead urged the Bureau to provide for an implementation period long enough to allow for the exhaustion of existing card inventories through ordinary sales, a process most commenters generally estimated would span 12 to 18 months, although a few suggested even longer. Under such an approach, industry commenters argued, financial institutions would be able to introduce newly-printed and compliant prepaid account product packages gradually so that they could avoid excessive expenses without needing to destroy a large number of non-compliant packages. Consumer advocacy groups and other commenters generally did not address this issue.

Few industry commenters addressed the potential time needed for the implementation of changes related to other potential issues to be addressed by the proposed rule, such as error resolution procedures, access to account information, or other provisions in Regulation E. Commenters who did address these changes requested that financial institutions be given between 12 and 24 months of time to implement any systems-related updates. One commenter noted that such regulatory changes generally require making changes to systems, sales processes and training tools; conducting tests to ensure that changes are properly implemented without disruption to cardholders; and communicating changes to cardholders. These commenters further noted that systems-related updates are typically undertaken at predetermined biannual intervals and that regulatory deadlines resulting in systems-related updates at previously unscheduled times would be particularly costly and disruptive.

Proposal

The Bureau is proposing, in general, a nine month effective date for the requirements of new § 1005.18. Proposed § 1005.18(h)(1) would state that, except as provided in proposed § 1005.18(h)(2), the requirements of EFTA and Regulation E, as modified by proposed § 1005.18, apply to prepaid accounts nine months following the publication of the Bureau's final rule in the **Federal Register**. The disclosure requirements in proposed § 1005.18(b) and (f)(2) would apply to prepaid account packaging, access devices, and other physical materials that are manufactured, printed, or otherwise prepared in connection with a prepaid account on or after nine months. Thus, proposed § 1005.18(h)(1) would generally make applicable to all prepaid accounts the requirements of EFTA and Regulation E, as modified by proposed § 1005.18's proposed provisions including those governing disclosures, access to prepaid account information, limited liability and error resolution, among others, after nine months. However, this first proposed effective date would not require destruction of previously-printed materials because it would only require packages, cards and other materials printed on or after the nine month date to comply with the rule's disclosure requirements in

[311] *See* 77 FR 30923, 30925 (May 24, 2012).

proposed § 1005.18(b) and (f)(2). These disclosure requirements would apply after nine months, however, for prepaid account disclosures and other information made available to consumers online or by telephone.

For prepaid account packaging, access devices, and other printed materials created prior to this first effective date, the Bureau believes that nothing proposed herein would mandate a change-in-terms notice insofar as the proposal would not require increased fees, liability, or fewer types of available electronic fund transfers for consumers. *See* § 1005.8(a) and 12 CFR 1030.5(a)(1). If, however, financial institutions wish to avail themselves of the more limited error resolution or limited liability requirements for existing unregistered prepaid accounts and their existing terms provide greater protections, then a change-in-terms notice may be required.

Of course, if financial institutions wish to make substantive changes to prepaid account fees or terms, they would, as always, be required to remove from retail stores and other distribution channels prepaid account packaging, access devices, and other printed materials that their changes render inaccurate, and to provide notice of those changes to consumers with existing prepaid accounts. The Bureau believes that such legal requirements exist independent of the proposed rule under operative state consumer protection and contract laws.

The Bureau understands that it may take some financial institutions longer than nine months to fully redesign prepaid account packaging, access devices, and other printed materials, and to begin printing new products. The Bureau is not proposing to mandate that financial institutions start manufacturing new materials exactly at the nine month mark. Rather, the Bureau is proposing to require that at whatever point after the nine month date a financial institution does decide to print new materials, those materials be in compliance with the requirements of proposed § 1005.18.

Other than disclosure-related issues discussed in proposed § 1005.18(h)(2), the Bureau believes nine months is an appropriate implementation period for the provisions proposed herein. The Bureau seeks to ensure that consumers receive the benefit of the protections proposed herein as soon as possible. As noted in the previous discussions of the Bureau's Study of Prepaid Account Agreements, a majority of providers are already complying with a majority of the proposed requirements. To the extent entities do need to make changes, the Bureau believes that they can be accomplished within a nine month period. Nevertheless, the Bureau seeks comment on whether nine months is appropriate or whether a longer or shorter period should be adopted for these parts of the proposal.

The Bureau is also proposing a delayed effective date for certain packaging-related changes, which would be 12 months following the publication of the final rule in the **Federal Register**. This second date, in proposed § 1005.18(h)(2), would require full compliance with the rule's disclosure requirements and prohibit the offering, sale or otherwise making available of prepaid accounts and related packaging, access devices, or other printed materials without such disclosures. As a result, by 12 months, financial institutions and their third party distribution agents would have to remove from retail store shelves and other distribution channels any prepaid accounts with disclosures not fully in compliance with the rule. As noted above, the Bureau believes that 12 months is an appropriate period after which products with old disclosures should not be sold. As noted, industry representatives have indicated to the Bureau that typically, prepaid product restocking cycles occur at least every 12 to 18 months, if not more frequently, although it could take as long as 24 months to sell out all existing product on retail shelves. By allowing financial institutions time to prepare, the Bureau expects its proposal to minimize, even if it may not entirely eliminate, destruction of prepaid product packaging. The Bureau notes that not all existing inventories will be exhausted after 12 months as part of normal restocking cycles. However, the Bureau believes that after 12 months, such inventories will be sufficiently exhausted such that to permit the sale of non-compliant packages should no longer be permitted. Further, the Bureau notes so long as it proposed a fixed end-date for the sale of non-compliant packages, prepaid providers will always have to incur certain fixed costs involved in confirming that non-compliant product is removed from retail stock. Thus, even if the Bureau adopted the longest period suggested by Prepaid ANPR commenters, providers still would need to incur costs in confirming that they and their retail partners are no longer offering non-compliant products for sale.

The Bureau seeks comment on its proposed implementation timeframes for this proposed rule as set forth in proposed § 1005.18(h), as well as possible alternative approaches. In particular, the Bureau seeks comment and supporting data on the costs to industry and benefits to consumers that might be expected from the Bureau's proposed effective dates and from any alternative approaches. Of particular interest to the Bureau is whether and to what extent the proposed timeframes would require financial institutions to remove, replace, and destroy portions of their product inventories and, if so, what the costs of doing so would be at various time intervals, including those proposed herein. The Bureau solicits comment both on the potential costs of alternate implementation timelines and on possible logistical constraints, such as the expected amount of time needed for third parties to print and deliver new prepaid account packages and other materials to financial institutions or those institutions' distribution networks or other service providers, and the expected amount of time needed for financial institutions to update their systems to comply with the proposed disclosure requirements and other requirements of Regulation E generally.

In addition, the Bureau specifically requests comment on whether an effective date longer than 9 months would be needed for financial institutions to comply with the access to account information requirements proposed in § 1005.18(c) and, if so, what an appropriate effective date for this portion of the proposal might be. The Bureau understands that many financial institutions currently provide prepaid account consumers with access to more than 60 days of account history and, additionally, that financial institutions generally have obligations to retain prepaid account transactional records outside the context of Regulation E for far longer than 60 days. The Bureau specifically seeks comment on the amount of prepaid account transactional records financial institutions currently retain now and any difficulties financial institutions would face in using such transactional records to comply with proposed § 1005.18(c).

The Bureau is not proposing a longer effective date for implementation of the disclosures on prepaid access devices in proposed § 1005.18(b)(7) for access devices that were sold or delivered to consumers prior to the effective date of the final rule. The Bureau understands that prepaid cards generally already list the financial institution's name, telephone number and URL of a Web site on the back of the card, and thus no changes to consumers' access devices would need to be made as a result of this proposal. The Bureau requests comment, however, on whether there may be prepaid cards that currently do

not list this information and, if so, whether the Bureau should allow financial institutions longer than nine months to replace those cards.

The Bureau also seeks comments on whether it should adopt an alternative approach to the effective date of this proposal or whether it should adopt a single effective date for all proposed provisions.

Section 1005.19 Internet Posting of Prepaid Account Agreements

The Bureau is proposing new § 1005.19 to require prepaid card issuers to submit agreements for prepaid accounts to the Bureau for posting on a publicly-available Web site established and maintained by the Bureau. The Bureau is also proposing to require issuers to make prepaid account agreements available to the public on the issuers' own Web sites or, in certain limited circumstances, provide agreements directly to consumers holding prepaid accounts via a restricted Web site or in writing upon request. These new provisions in proposed § 1005.19 would be similar to existing requirements in Regulation Z 12 CFR 1026.58 for open-end consumer credit card plans.

The Bureau is proposing § 1005.19 pursuant to its disclosure authority in EFTA section 905(a), its adjustment authority in EFTA section 904(c), and its authority in section 1032(a) of the Dodd-Frank Act. The Bureau believes collection and disclosure of the agreements allows for clear and accessible disclosure of the terms and conditions of prepaid accounts, and is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, because the proposed rule will assist consumers' understanding of and shopping for prepaid accounts based on the terms and conditions of those accounts. In addition, collection and disclosure of the agreements would, consistent with Dodd-Frank Act section 1032(a), permit the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. The Bureau is also proposing § 1005.19 pursuant to its authority in section 1022(c)(4) of the Dodd-Frank Act, which permits it to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers. Specifically, the Bureau is proposing to receive prepaid account agreements submitted by issuers on a quarterly basis, subject to certain exceptions, and to post those agreements on its Web site in order to aid the Bureau's monitoring for risks to consumers in the offering or provision of consumer financial products or services under section 1022(c)(1) and (4) of the Dodd-Frank Act.

In 2009, section 204 of the Credit CARD Act added new TILA section 122(d) to require creditors to post agreements for open-end consumer credit card plans on the creditor's Web sites and to submit those agreements to the Board for posting on a publicly-available Web site established and maintained by the Board. 15 U.S.C. 1632(d). The Board implemented these provisions in what is now 12 CFR 1026.58. The Bureau's receipt of credit card agreements pursuant to § 1026.58 has aided the Bureau in its market monitoring functions, and the Bureau's posting of those credit card agreements on its Web site may, among other things, enable consumers to more effectively compare credit cards.

The Bureau is proposing § 1005.19 for substantially the same reasons with respect to prepaid accounts. The Bureau expects to use the prepaid account agreements it receives from issuers pursuant to proposed § 1005.19 to assist in its market monitoring efforts. In addition, the Bureau's posting of prepaid account agreements on its Web site would allow consumers to more easily compare terms of prepaid accounts currently in the marketplace as well as facilitate third parties' analysis of prepaid accounts and the development of online shopping tools. Consumers would also benefit from having access to their prepaid account agreements available through the issuers' Web sites (or available upon request in limited instances).

The specific requirements in proposed § 1005.19 largely mirror existing provisions in § 1026.58 and the Bureau expects these rules to generally function in the same manner, albeit with certain modifications made in proposed § 1005.19 to address differences between the credit card and prepaid account markets.

19(a) Definitions

The Bureau is proposing in § 1005.19(a) certain definitions specific to proposed § 1005.19.

19(a)(1) Agreement

The Bureau is proposing § 1005.19(a)(1) to define ''agreement'' or ''prepaid account agreement'' for purposes of proposed § 1005.19 as the written document or documents evidencing the terms of the legal obligation, or prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. An agreement or prepaid account agreement also includes fee information, as defined in proposed § 1005.19(a)(3), which is discussed below. Proposed § 1005.19(a)(1) mirrors the definition of ''agreement'' or ''credit card agreement'' in § 1026.58(b)(1) in Regulation Z.

Proposed comment 19(a)(1)–1 would explain that an agreement may consist of several documents that, taken together, define the legal obligation between the issuer and the consumer. The Bureau has not included the second part of Regulation Z comment 58(b)(1)–2, which gives the example of provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the card issuer's or consumer's obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract. The Bureau does not believe that prepaid account agreements contain arbitration clauses or provisions allowing the issuer to unilaterally alter contract terms in documents separate from the main agreement, and therefore does not believe such examples are necessary to include in proposed comment 19(a)(1)–1. The Bureau also has not included a comment similar to Regulation Z comment 58(b)(1)–1, which addresses inclusion of certain pricing information in a credit card agreement, as the Bureau does not believe such a comment is relevant to prepaid accounts.

19(a)(2) Amends

The Bureau is proposing § 1005.19(a)(2) to provide that for purposes of proposed § 1005.19, an issuer ''amends'' an agreement if it makes a substantive change (an ''amendment'') to the agreement. A change is substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. Any change in the fee information, as defined in proposed § 1005.19(a)(3), discussed below, is deemed to be substantive. Proposed § 1005.19(a)(2) mirrors the definition of the term amends in § 1026.58(b)(2).

With respect to § 1026.58, the Board determined that requiring resubmission

of credit card agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of increased transparency.[312] The Bureau believes the same would be true for prepaid account issuers and therefore proposes a similar definition here.

Proposed comment 19(a)(2)–1, which mirrors Regulation Z comment 58(b)(2)–1, would give examples of changes, other than changes to fee information, that generally would be considered substantive, including: (i) Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of the prepaid account to the consumer, such as changes in a provision describing how the prepaid account's monthly fee will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

Proposed comment 19(a)(2)–2, which mirrors Regulation Z comment 58(b)(2)–2, would give examples of changes that generally would not be considered substantive, such as: (i) Correction of typographical errors that do not affect the meaning of any terms of the agreement; (ii) changes to the issuer's corporate name, logo, or tagline; (iii) changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins; (iv) changes to the name of the prepaid account to which the program applies; (v) reordering sections of the agreement without affecting the meaning of any terms of the agreement; (vi) adding, removing, or modifying a table of contents or index; and (vii) changes to titles, headings, section numbers, or captions.

The Bureau requests comment, however, on whether certain changes, such as to an issuer's corporate name or to the name of the prepaid account to which the program applies, should be considered substantive for purposes of proposed § 1005.19. The Bureau questions whether such changes, if not reflected in agreements posted to the Bureau's or the issuer's Web site, might inhibit a consumer's ability to locate an agreement for an existing prepaid account or to effectively comparison shop for a new prepaid account.

19(a)(3) Fee Information

The Bureau is proposing § 1005.19(a)(3) to define ''fee information'' for purposes of proposed § 1005.19 as the information listed for the long form fee disclosure in proposed § 1005.18(b)(2)(ii). The Bureau believes that to enable consumers to shop for prepaid accounts and to compare information about various prepaid accounts in an effective manner, it is necessary that the agreements posted on the Bureau's Web site include fees and other pricing information. The Bureau expects that most issuers will include the long form disclosure required by proposed § 1005.18(b)(2)(ii) directly in their prepaid account agreements. Others may perhaps maintain the long form disclosure as an addendum or other supplement to their prepaid account agreements.

Proposed § 1005.19(a)(3) is similar to the definition of pricing information in § 1026.58(b)(7), but omits the exclusion for temporary or promotional rates and terms or rates and terms that apply only to protected balances, as the Bureau does not believe there is currently an equivalent to such rates and terms for prepaid accounts.

The Bureau requests comment on whether it should also require that the short form disclosure that would be required by proposed § 1005.18(b)(2)(i) also be included in the definition of fee information for purposes of proposed § 1005.19 and thus generally required to be submitted to the Bureau and posted on the issuer's Web site, as discussed below. The Bureau also solicits comment on whether, in light of the revisions proposed herein regarding credit accessed by prepaid accounts, an exclusion is needed for temporary rates and terms or rates and terms that apply only to protected balances similar to the exclusion in § 1026.58(b)(7).

19(a)(4) Issuer

The Bureau is proposing § 1005.19(a)(4) to define ''issuer'' or ''prepaid account issuer'' for purposes of proposed § 1005.19 as the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement. Proposed § 1005.19(a)(4) mirrors the definition of card issuer in § 1026.58(b)(4).

As discussed in more detail above, the Bureau understands that, in some cases, more than one financial institution is involved in the administration of a prepaid program. For example, a smaller bank may partner with a larger bank to market prepaid accounts to the smaller bank's customers, or a bank may partner with a program manager to offer prepaid accounts. The Bureau also understands that the terms of the arrangements can vary, for example with respect to which party uses its name and brand in marketing materials, sets fees and terms, conducts customer identification and verification, provides access to account information, holds the pooled account, and absorbs the risk of default or fraud.

The Board believed that with respect to the definition of card issuer in what is now § 1026.58(b)(4), without a bright-line rule defining which institution is the issuer, institutions might find it difficult to determine their obligations under § 1026.58.[313] Similarly, absent clarification from the Bureau, it may be difficult to determine which entity would be responsible for compliance with proposed § 1005.19 for a particular prepaid account. For example, if two financial institutions are involved in issuing a prepaid program, one may have fewer than 3,000 open accounts while the other has more than 3,000 open accounts. It may be difficult to determine whether, for example, the de minimis exception (*see* proposed § 1005.19(b)(4)) applies in such cases. In addition, it may be unclear which institution is obligated to post and maintain the agreements on its Web site pursuant to proposed § 1005.19(c) or (d)(1)(i) or respond to telephone requests for copies of agreements pursuant to proposed § 1005.19(d)(1)(ii), discussed below. The Bureau therefore believes it would be beneficial to clarify which institution would be the prepaid account issuer for purposes of proposed § 1005.19.

The Bureau is thus proposing to define issuer, in proposed § 1005.19(a)(4), with respect to a particular agreement as the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of that agreement. The Bureau is proposing this approach for several reasons.

First, the proposed definition would create a bright-line rule that would enable institutions involved in issuing prepaid accounts to determine their obligations under proposed § 1005.19. Second, the proposed definition would be consistent with the actual legal relationship into which a consumer enters under a prepaid account agreement. Third, the Bureau believes that the institution to which the consumer is legally obligated under the

[312] 75 FR 7658, 7760 (Feb. 22, 2010).

[313] *See* 76 FR 22948, 22987 (Apr. 25, 2011).

agreement may be in the best position to provide accurate, up-to-date agreements to both the Bureau and consumers.

Fourth, the Bureau understands that an institution that partners with multiple other entities to issue prepaid accounts, such as in the payroll card account context, will in many cases use the same agreement for all the prepaid accounts issued in connection with those arrangements. Therefore, while the number of prepaid accounts issued with a given partner may be small, the total number of consumers subject to the corresponding agreement may be quite large. The Bureau believes it would be beneficial to have such agreements submitted to the Bureau for posting on the Bureau's Web site.

The Bureau believes that in some cases consumers may be unsure about which institution issues their prepaid account. For example, a consumer may apply for a prepaid account through a link on the Web site of a bank with which the consumer has a pre-existing relationship, and the face of the prepaid card may prominently display that bank's logo. In some such cases, the consumer may assume that the card is issued by that bank, even though Web site disclaimers, the prepaid account agreement, the back of the prepaid card, and other materials explain that the card is issued by another institution. The Bureau believes, however, that institutions can take steps to alleviate this confusion, for example by disclosing the identity of the other institution and providing contact information for the other institution or a link to the other institution's Web site. The Bureau also believes that consumers would benefit from having a clearer understanding of to which institution they are legally obligated under a prepaid account agreement.

Proposed comment 19(a)(4)–1, which mirrors Regulation Z comment 58(b)(4)–1, would provide the following example of how the definition of issuer would apply. Bank X and Bank Y work together to issue prepaid accounts. A consumer that obtains a prepaid account issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states ''This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Prepaid Account.'' The prepaid account issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the prepaid account through a link on Bank Y's Web site and the cards prominently feature the Bank Y logo on the front of the card.

Proposed comment 19(a)(4)–2, which mirrors Regulation Z comment 58(b)(4)–2, would explain that while an issuer has a legal obligation to comply with the requirements of proposed § 1005.19, it generally may use a third-party service provider to satisfy its obligations under proposed § 1005.19, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the entity with which it partners to issue prepaid accounts to fulfill the requirements of proposed § 1005.19 on the issuer's behalf. For example, Program Manager and Bank work together to issue prepaid accounts. Under the proposed § 1005.19(a)(4) definition, Bank is the prepaid account issuer for purposes of proposed § 1005.19. However, Program Manager services the prepaid accounts, including mailing account opening materials and periodic statements to consumers. While Bank is responsible for ensuring compliance with proposed § 1005.19, Bank may arrange for Program Manager (or another appropriate third-party service provider) to submit prepaid account agreements to the Bureau under proposed § 1005.19 on Bank's behalf. Bank must comply with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.

Proposed comment 19(a)(4)–3, which mirrors Regulation Z comment 58(b)(4)–3.i, would note that, as explained in proposed comment 19(c)–2, if an issuer provides consumers with access to specific information about their individual accounts, such as providing electronic history of consumers' account transactions pursuant to § 1005.18(c)(1)(ii), through a third-party Web site, the issuer is deemed to maintain that Web site for purposes of proposed § 1005.19. Such a Web site is deemed to be maintained by the issuer for purposes of proposed § 1005.19 even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's Web site is an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of proposed § 1005.19. For example, Program Manager and Bank work together to issue prepaid accounts. Under the proposed § 1005.19(a)(4) definition, Bank is the issuer that issues these prepaid accounts for purposes of proposed § 1005.19. Bank does not maintain a Web site specifically related to its prepaid accounts. However, consumers can access information about their individual accounts, such as an electronic history of their account transactions, through a Web site maintained by Program Manager. Program Manager designs the Web site and owns and maintains the information technology infrastructure that supports the Web site. The Web site is branded and held out to the public as belonging to Program Manager. Because consumers can access information about their individual accounts through this Web site, the Web site is deemed to be maintained by Bank for purposes of proposed § 1005.19. Bank therefore may comply with proposed § 1005.19(c) or (d)(1)(i) by ensuring that agreements offered to the public are posted on Program Manager's Web site in accordance with proposed § 1005.19(c) or (d)(1)(i), respectively. Bank need not create and maintain a Web site branded and held out to the public as belonging to Bank in order to comply with proposed § 1005.19(c) and (d)(1)(i) as long as Bank ensures that Program Manager's Web site complies with these sections.

The Bureau is not proposing a comment similar to that of Regulation Z comment 58(b)(4)–3.ii which addresses Web site posting of private label credit card plans, as the Bureau does not believe such a comment is relevant for prepaid accounts, as discussed below.

The Bureau solicits comment on its proposed definition of issuer, whether additional guidance would be helpful, and on whether there are preferable alternative approaches to defining issuer for purposes of proposed § 1005.19. Additionally, the Bureau is aware that some program managers offer prepaid accounts in conjunction with multiple issuers, where the terms of the prepaid account agreements are largely similar. The Bureau also solicits comment on whether submission of a separate agreement for each issuer is the best approach in this situation or whether such agreements should be submitted in some other manner.

19(a)(5) Offers

The Bureau is proposing § 1005.19(a)(5) to provide that for purposes of proposed § 1005.19, an issuer ''offers,'' or ''offers to the public,'' a prepaid account agreement if the issuer solicits applications for or

otherwise makes available prepaid accounts that would be subject to that agreement.

Proposed comment 19(a)(5)–1 would explain that an issuer is deemed to offer a prepaid account agreement to the public even if the issuer solicits applications for or otherwise makes available prepaid accounts only to a limited group of persons. For example, an issuer may market affinity cards to students and alumni of a particular institution of higher education, or may solicit only residents of a specific geographic location for a particular prepaid account; in these cases, the agreement would be considered to be offered to the public. Similarly, agreements for prepaid accounts issued by a credit union are considered to be offered to the public even though such prepaid accounts are available only to credit union members. Agreements for payroll card accounts, government benefit accounts, or for prepaid accounts used to distribute student financial aid disbursements, or property and casualty insurance payouts, and other similar programs are also considered to be offered to the public.

Proposed § 1005.19(a)(5) is similar to the definition of the term ''offers'' in § 1026.58(b)(5). Section 1026.58(b)(5) provides that an issuer ''offers'' or ''offers to the public'' an agreement if the issuer is soliciting or accepting applications for accounts that would be subject to that agreement. The Bureau does not believe that prepaid account issuers solicit or accept applications for prepaid accounts in the same manner as credit card issuers do for credit card accounts, and thus has modified this language for purposes of proposed § 1005.19(a)(5). Proposed comment 19(a)(5)–1 is similar to Regulation Z comment 58(b)(5)–1, but includes several additional examples of prepaid accounts offered to the public. The Bureau is not proposing an equivalent comment to Regulation Z's comment 58(b)(5)–2, which provides that a card issuer is deemed to offer a credit card agreement to the public even if the terms of that agreement are changed immediately upon opening to terms not offered to the public, as the Bureau does not believe that prepaid account terms are modified in this manner.

19(a)(6) Open Account

The Bureau is proposing § 1005.19(a)(6) to provide that for purposes of proposed § 1005.19, a prepaid account is an ''open account,'' or ''open prepaid account,'' if (i) there is an outstanding balance in the prepaid account; (ii) if the consumer can load funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit through a credit plan that would be a credit card account under Regulation Z, 12 CFR part 1026 that is offered in connection with a prepaid account. A prepaid account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) is considered an open account or open prepaid account.

Proposed comment 19(a)(5)–1 would explain that a prepaid account that meets any of the criteria set forth in proposed § 1005.19(a)(5) is considered open even if the issuer considers the account inactive. The term open account is used in the provisions regarding the de minimis and product testing exceptions in proposed § 1005.19(b)(4) and (5) and the requirements in proposed § 1005.19(d) for agreements not submitted to the Bureau, discussed below.

Proposed § 1005.19(a)(6) is similar to the definition of open account or open credit card account in § 1026.58(b)(6). While § 1026.58(b)(6) defines an open credit card account as one in which the cardholder can obtain extensions of credit on the account, or there is an outstanding balance on the account that has not been charged off, the Bureau has modified the definition to better reflect what it believes constitutes an open account in the prepaid context. Proposed § 1005.19(a)(6) includes the explanation used in § 1026.58(b)(6), which provides that an account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) is nonetheless considered an open account. Proposed comment 19(a)(6)–1 is similar to Regulation Z comment 58(b)(6)–1, with modifications to reflect the terms of proposed § 1005.19(a)(6).

19(a)(7) Prepaid Account

The Bureau is proposing § 1005.19(a)(7) to provide that for purposes of proposed § 1005.19, ''prepaid account'' means a prepaid account as defined in proposed § 1005.2(b)(3). Proposed comment 19(a)(7)–1 would explain that for purposes of proposed § 1005.19, a prepaid account includes, among other things, a payroll card account as defined in proposed § 1005.2(b)(3)(iii) and a government benefit account as defined proposed §§ 1005.2(b)(3)(iv) and 1005.15(a)(2).

The Bureau solicits comment on whether there are any types of prepaid accounts as defined in proposed § 1005.2(b)(3) that should be excluded from the definition of prepaid account for purposes of this section or that should be excluded from certain of the requirements of this section.

The Bureau expects that issuers offering prepaid accounts with overdraft services or other credit features proposed to be governed as credit cards under Regulation Z, as discussed below, would submit to the Bureau pursuant to proposed § 1005.19 both the initial prepaid account agreement (including the disclosures required by proposed § 1005.18(b)(2)(ii)(B) as part of the fee information pursuant to proposed § 1005.19(a)(3)) and the subsequent prepaid account agreement disclosing overdraft or credit terms, and also submit the latter agreement to the Bureau as a credit card agreement pursuant to § 1026.58. The Bureau does not believe this approach would impose significant burden on prepaid account issuers, but nonetheless solicits comment on this approach.

Private Label Credit Cards

The Board defined the term ''private label credit card account'' in what is now § 1026.58(b)(8)(i) as a credit card account under an open-end (not home secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants. The term ''private label credit card plan'' in § 1026.58(b)(8)(ii) is similarly defined as all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. Regulation Z contains an exception and other specific provisions tailored specifically to private label credit card accounts and plans. *See, e.g.,* § 1026.58(b)(8), (c)(6); comments 58(b)(8)–1 through –4; comments 58(c)(6)–1 through –6; and comment 58(d)–3.

The Bureau does not believe that equivalent provisions are necessary or appropriate for proposed § 1005.19, as the equivalent of a private label credit card in the prepaid context would be a closed-loop gift card. Such gift cards are outside the scope of the term prepaid account, as defined in proposed §§ 1005.2(b)(3) and 1005.19(a)(7).

19(b) Submission of Agreements to the Bureau

Proposed § 1005.19(b) would require each issuer to electronically submit to the Bureau prepaid account agreements offered by the issuer on a quarterly basis. The Bureau will post the prepaid account agreements it receives on its Web site pursuant to proposed § 1005.19(b)(7), discussed below.

19(b)(1) Quarterly Submissions

The Bureau is proposing § 1005.19(b)(1) to require issuers to make quarterly submissions of prepaid account agreements to the Bureau, in the form and manner specified by the Bureau. Such quarterly submissions would be required to be sent to the Bureau no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. Proposed comment 19(b)(1)–1 would refer to Regulation Z comment 58(c)(1)–1 for additional guidance as to the quarterly submission timing requirement.

Regulation Z's § 1026.58(b)(3) defines the term ''business day,'' for purposes of § 1026.58, to mean a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. Section 1005.2(d) contains a similar definition of the term business day (any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions). Insofar as that definition applies generally in subpart A and the Bureau believes it is appropriate for use in proposed § 1005.19, the Bureau believes it is unnecessary to define the term again within proposed § 1005.19.

Proposed § 1005.19(b)(1) would require that each quarterly submission contain the following four items. First, a quarterly submission must contain identifying information about the issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), and the name of the program manager, if any, for each agreement.

Second, the quarterly submission must contain the prepaid account agreements that the issuer offered to the public as of the last business day of the preceding calendar quarter that the issuer has not previously submitted to the Bureau.

Third, the quarterly submission must contain any prepaid account agreement previously submitted to the Bureau that was amended during the previous calendar quarter and that the issuer offered to the public as of the last business day of the preceding calendar quarter, as described in proposed § 1005.19(b)(2) discussed below.

Finally, the quarterly submission must contain notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer is withdrawing, as described in proposed § 1005.19(b)(3), (4)(iii), and (5)(iii) discussed below.

Proposed comment 19(b)(1)–2.i would explain that an issuer is not required to make any submission to the Bureau at a particular quarterly submission deadline if, during the previous calendar quarter, the issuer did not take any of the following actions: (A) Offering a new prepaid account agreement that was not submitted to the Bureau previously; (B) amending an agreement previously submitted to the Bureau; and (C) ceasing to offer an agreement previously submitted to the Bureau. Proposed comment 19(b)(1)–2.ii would refer to Regulation Z comment 58(c)(1)–2.ii for additional guidance as to when a quarterly submission is not required.

Proposed comment 19(b)(1)–3 would explain that proposed § 1005.19(b)(1) permits an issuer to submit to the Bureau on a quarterly basis a complete, updated set of the prepaid account agreements the issuer offers to the public. Proposed comment 19(b)(1)–3 would also refer to Regulation Z comment 58(c)(1)–3 for additional guidance regarding quarterly submission of a complete set of updated agreements.

Proposed § 1005.19(b)(1) generally mirrors § 1026.58(c)(1), except for the addition of the program manager's name into proposed § 1005.19(b)(1)(i). Proposed comments 19(b)(1)–1, –2, and –3 are similar to Regulation Z comments 58(c)(1)–1, –2, and –3 except that proposed comments 19(b)(1)–1, –2.ii and –3 have been shortened to cross-reference the parallel comments in Regulation Z for specific examples regarding quarterly submission of agreements as the Bureau intends that these provisions would function the same for prepaid accounts as they do for credit card accounts.

Proposed § 1005.19(b) would require submission to the Bureau of agreements for all prepaid accounts offered to the public, unless one or more of the exceptions discussed below are met for withdrawn agreements (proposed § 1005.19(b)(3)), issuers that qualify for the de minimis exception (proposed § 1005.19(b)(4)), or agreements offered as part of a product test (proposed § 1005.19(b)(5)). The Bureau solicits comment, however, on whether it should instead require submission of agreements for all open prepaid accounts (rather than only for agreements that are currently offered to the public), unless the de minimis or product testing exceptions are met. The Bureau believes that, in many instances, when a prepaid account issuer decides to cease offering a specific prepaid account program to the public, it also closes all existing accounts under that program after a period of time. The Bureau requests comment on whether this practice is widespread, or whether prepaid account issuers may have large numbers of open prepaid accounts under programs that are no longer offered to the public. If there are such programs, the Bureau believes there may be benefits to consumers in being able to locate agreements for such programs via the Bureau's Web site even if those programs are no longer being offered to the public.

In addition, the Bureau solicits comment on whether submission of agreements on a quarterly basis is appropriate, or whether a shorter period, or a longer period such as semi-annually or annually, should be used. The Bureau also solicits comment on whether, alternatively, it should require issuers to submit revised agreements whenever agreements are revised, and whether such a requirement would impose a lower burden on issuers than would a set submission schedule.

As discussed above, proposed § 1005.19(b)(1) would require quarterly submission of agreements for all prepaid accounts offered to the public, unless one or more exceptions are met and proposed comment 19(b)(1)–3 would explain an issuer is permitted to submit a complete, updated set of the prepaid account agreements each quarter. The Bureau solicits comment on whether, alternatively, it should instead require issuers to resubmit all agreements on a quarterly (or other) basis.

19(b)(2) Amended Agreements

The Bureau is proposing § 1005.19(b)(2) to provide that if a prepaid account agreement has been submitted to the Bureau, the agreement has not been amended, and the issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. Proposed comment 19(b)(2)–1 would refer to Regulation Z comment 58(c)(3)–1 for additional guidance regarding no requirement to resubmit agreements that have not been amended.

Proposed § 1005.19(b)(2) would also require that if a prepaid account agreement that previously has been submitted to the Bureau is amended, and the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. Proposed comment 19(b)(2)–2 would

further explain that the issuer is required to submit the amended agreement to the Bureau only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective and would refer to Regulation Z comment 58(c)(3)–2 for additional guidance regarding the submission of amended agreements. Proposed comment 19(b)(2)–3 would reiterate that agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Bureau and would refer to Regulation Z comment 58(c)(3)–3 for additional guidance on agreements that have been amended but are no longer offered to the public.

Finally, proposed comment 19(b)(2)–4 would explain that an issuer may not fulfill the requirement in proposed § 1005.19(b)(2) to submit the entire amended agreement to the Bureau by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments must be integrated into the text of the agreement (or the optional addendum described in proposed § 1005.19(b)(6)), not provided as separate riders. Proposed comment 19(b)(2)–4 would also refer to Regulation Z comment 58(c)(3)–4 for additional guidance as to the submission of revised agreements.

The Bureau believes that permitting issuers to submit change-in-terms notices or riders containing amendments or revisions would make it difficult to determine a prepaid account's current fees and terms. Consumers could be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Bureau believes that issuers are better placed than consumers to assemble this information and that prepaid issuers customarily incorporate revised terms into their prepaid account agreements on a regular basis rather than only issue separate riders or notices.

The Bureau solicits comment on whether it should require that other specific information be submitted regarding the prepaid account program or programs to which a specific agreement applies. For example, for payroll card accounts, the Bureau could require submission of the name of each employer that offers a payroll card account under a specific agreement, to assist consumers in identifying on the Bureau's or the issuer's Web site the agreement to which their payroll card account is subject.

The Bureau also seeks comment on the possible format or formats in which it might require issuers to submit prepaid account agreements. For example, proposed § 1005.19(c)(4), discussed below, would require issuers to post agreements on their Web sites in any electronic format that is readily usable by the general public. The Bureau requests comment on whether it should adopt a similar standard for agreements that are provided to it pursuant to proposed § 1005.19(b), or whether it should instead (or additionally) require issuers to provide agreements (or a portion of the agreement, such as the long form disclosure) using, for example, a machine-readable text format such as JSON, XML, or similar format that could be used by the Bureau or third parties to more easily create comparison shopping tools. *See* proposed comment 18(b)(3)(i)(B)–3 (discussing machine-readable text).

The Bureau expects to provide additional details regarding the electronic submission process in connection with the release of its final rule on this subject. Issuers will have no submission obligations until the Bureau has issued technical specifications addressing the form and manner for submission of agreements. The Bureau intends for the streamlined electronic submission process to be operational before proposed § 1005.19(b) becomes effective.

Proposed § 1005.19(b)(2) mirrors the Regulation Z provisions regarding submission of amended agreements in § 1026.58(c)(3). Proposed comments 19(b)(2)–1 through –4 mirror Regulation Z comments 58(c)(3)–1 through –4, although the proposed 19(b)(2) comments have been shortened to cross-reference the parallel comments in Regulation Z for specific examples of submission of amended agreements as the Bureau intends that these provisions would function the same for prepaid accounts as they do for credit card accounts.

19(b)(3) Withdrawal of Agreements

The Bureau is proposing § 1005.19(b)(3) to provide that if an issuer no longer offers to the public a prepaid account agreement that previously has been submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. Proposed § 1005.19(b)(3) mirrors the Regulation Z provisions regarding withdrawal of agreements previously submitted to the Bureau in § 1026.58(c)(4). Proposed comment 19(b)(3)–1 cross-references Regulation Z comment 58(c)(4)–1 for a specific example regarding withdrawal of submitted agreements as the Bureau intends that this provision would function the same for prepaid accounts as it does for credit card accounts.

With respect to credit cards, the Board found that the number of credit card agreements currently in effect but no longer offered to the public was extremely large, and thus providing such agreements to the Board would have posed a significant burden on industry as well as diluted the active agreements posted on the Board's Web site to such an extent that they might no longer be useful to consumers.[314] The Bureau does not believe that prepaid issuers have open prepaid accounts subject to agreements no longer offered to the public the same way that credit card issuers do. However, the Bureau believes that the primary benefit of making prepaid account agreements available on the Bureau's Web site would be to assist consumers in comparing prepaid account agreements offered by various issuers when shopping for a new prepaid account. Including agreements that are no longer offered to the public would not facilitate comparison shopping by consumers because consumers could not obtain the accounts subject to these agreements. Thus, the Bureau is proposing that an issuer only submit to the Bureau under proposed § 1005.19(b) those agreements that the issuer currently offers to the public.

19(b)(4) De Minimis Exception

The Bureau is proposing § 1005.19(b)(4) to provide a de minimis exception for the requirement to submit prepaid account agreements to the Bureau. Proposed § 1005.19(b)(4)(i) would state that an issuer is not required to submit any prepaid account agreements to the Bureau if the issuer had fewer than 3,000 open prepaid accounts as of the last business day of the calendar quarter. As in Regulation Z, this de minimis exception would apply to all open prepaid accounts of the issuer, not to each of the issuer's prepaid account programs separately.

For Regulation Z, the Board was not aware of a way to define a ''credit card plan'' that would not divide issuers' portfolios into such small units that large numbers of credit card agreements could fall under the de minimis exception.[315] The Board therefore established a de minimis exception based on an issuer's total number of

[314] 74 FR 54124, 54189 (Oct. 21, 2009).

[315] 74 FR 54124, 54191 (Oct. 21, 2009).

open accounts. § 1026.58(c)(5). The Bureau believes that the same issues apply in attempting to define a ''prepaid account program'' for purposes of a de minimis threshold, and therefore similarly proposes to adopt a de minimis threshold that applies to all of an issuer's prepaid programs, rather than on a program-by-program basis.

The Bureau is proposing to use a lower de minimis threshold of 3,000 open prepaid accounts, in place of the 10,000 open accounts threshold used in Regulation Z. The prepaid accounts market is smaller than the credit card market (based on number of open accounts) and there are some indications that smaller issuers (*i.e.,* with small numbers of open accounts rather than small based on entity size) may account for more of the prepaid market than do smaller issuers in the credit card market. The Bureau seeks to create a de minimis threshold that would exempt a similar portion of open prepaid accounts from this requirement as are exempted by the current analogous requirement for credit cards. However, the Bureau lacks specific data that would permit it to accurately determine a comparable threshold for prepaid accounts.

Public data indicate that none of the top 100 Visa and MasterCard credit card issuers (ranked by dollar amount of outstandings, and which covers both consumer and commercial credit cards) come close to falling below the 10,000 Regulation Z de minimis threshold, even as those issuers (when combined with Discover and American Express, which are the two largest U.S. issuers that are not MasterCard or Visa issuers) amount to more than 92 percent of total general purpose credit card loans outstanding.[316] The smallest credit card issuers in this top-100 list, based on total accounts and total active accounts, exceed the de minimis threshold by a factor of between two (for active accounts) and nearly four (for total accounts).

In comparison, the same public source indicates that three of the top 50 Visa and MasterCard prepaid account issuers would fall below a 10,000 threshold, and one of these is right at the proposed 3,000 threshold.[317] Furthermore, the data in this report include a number of types of other prepaid products beyond commercial cards that are outside the proposed definition of prepaid account, such as consumer gift, healthcare, and rebates/rewards, creating the likelihood that additional top-50 prepaid issuers could fall below a de minimis threshold of 10,000 open prepaid accounts.[318] Although it is not straightforward to calculate exactly how much of the market these top-50 prepaid issuers represent, available indications are that it is significantly below the 92 percent accounted for by the top-100 credit card issuers.[319]

The Bureau solicits comment on its proposed adoption of a 3,000 open accounts threshold for the de minimis exception. In addition, the Bureau recognizes that the proposed de minimis exception would not alleviate the administrative burden on large issuers of submitting agreements for prepaid account programs with a very small number of open accounts. The Bureau solicits comment on whether it should create a de minimis exception applicable to a prepaid account program offered by an issuer of any size and, if so, how the Bureau should define ''prepaid account program'' for purposes of such an exception.

Proposed comment 19(b)(4)–1 would explain that the de minimis exception in proposed § 1005.19(b)(4) is distinct from the product testing exception in proposed § 1005.19(b)(5). The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of prepaid account programs with fewer than 3,000 open accounts, regardless of the financial institution's total number of open accounts. Proposed comment 19(b)(4)–2 would refer to Regulation Z comment 58(c)(5)–2 for additional guidance on the de minimis exception.

Proposed § 1005.19(b)(4)(ii) would state that if an issuer that previously qualified for the de minimis exception ceases to qualify, the issuer must begin making quarterly submissions to the Bureau no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. Proposed comment 19(b)(4)–3 would refer to Regulation Z comment 58(c)(5)–3 for additional guidance on the date for determining whether an issuer qualifies for the de minimis exception. Proposed comment 19(b)(4)–4 would refer to Regulation Z comment 58(c)(5)–4 for additional guidance on the date for determining whether an issuer ceases to qualify for the de minimis exception.

Finally, proposed § 1005.19(b)(4)(iii) would state that if an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make quarterly submissions to the Bureau until the issuer notifies the Bureau that it is withdrawing all agreements it previously submitted to the Bureau. Proposed comment 19(b)(4)–5 would refer to Regulation Z comment 58(c)(5)–5 for additional guidance on an issuer's option to withdraw its agreements submitted to the Bureau.

Proposed § 1005.19(b)(4) mirrors the Regulation Z provisions regarding the de minimis exception in § 1026.58(c)(5), except for the lower proposed de minimis threshold figure. Proposed comments 19(b)(4)–1 to –5 mirror Regulation Z comments 58(c)(5)–1 to –5, although proposed comments 19(b)(1)–2 to –5 have been shortened to cross-reference the parallel comments in Regulation Z for specific examples regarding the de minimis exception as the Bureau intends that these provisions would function the same for prepaid accounts as they do for credit card accounts. In addition, the references to the private label credit card exception in Regulation Z comment 58(c)(5)–1 have been removed as the Bureau does not believe that exception is relevant in the prepaid card context, as discussed above.

19(b)(5) Product Testing Exception

The Bureau is proposing § 1005.19(b)(5) to provide a product testing exception to the requirement to submit prepaid account agreements to the Bureau. Proposed § 1005.19(b)(5) mirrors the Regulation Z provisions regarding the product testing exception in § 1026.58(c)(7).

[316] HSN Consultants, Inc., *The Nilson Report, Issue 1035* at 8, 10–11 (Feb. 2014), and *The Nilson Report, Issue 1038* at 10–11 (Apr. 2014). Public data for the next tranche of credit card issuers does not include account volume, but it does include outstandings volume. The lowest outstandings for an issuer in the third 50 cohort are more than 60 percent of the outstandings for the smallest issuer by total account volume in the top-100. See *The Nilson Report, Issue 1042* at 11 (June 2014). As the smallest issuer by total account volume in the top-100 exceeded the de minimis threshold by several factors, the available indications are that the third 50 cohort would not fall below the de minimis threshold either.

[317] HSN Consultants, Inc., *The Nilson Report, Issue 1043* at 10 (June 2014). One issuer had 9,000 cards in circulation, another had 8,000, and a third had only 3,000.

[318] One issuer was reported to have 14,000 cards in circulation, another had 16,000, and a third had 18,000.

[319] Nilson reports that the top-50 prepaid issuers accounted for some $118 billion in purchase volume in 2013. *The Nilson Report, Issue 1043* at 1 (June 2014). One leading consultancy has estimated load on open-loop prepaid products for that year at over $242 billion. Mercator Advisory Grp., *Eleventh Annual U.S. Prepaid Cards Market Forecasts,* 2014–2017 (Nov. 2014).

Proposed § 1005.19(b)(5)(i) would provide that an issuer is not required to submit to the Bureau a prepaid account agreement if, as of the last business day of the calendar quarter, the agreement: (A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time; (B) is used for fewer than 3,000 open prepaid accounts; and (C) is not offered to the public other than in connection with such a product test.

Proposed § 1005.19(b)(5)(ii) would provide that if an agreement that previously qualified for the product testing exception ceases to qualify, the issuer must submit the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. Finally, proposed § 1005.19(b)(5)(iii) would provide that if an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn.

The Bureau believes that the administrative burden on issuers of preparing and submitting to the Bureau agreements used for a small number of prepaid accounts in connection with a product test by an issuer outweighs the benefit of increased transparency of including these agreements on the Bureau's Web site. The Bureau understands that issuers often test new prepaid account strategies and products by offering prepaid accounts to discrete, targeted groups of consumers for a limited time. Posting these agreements on the Bureau's and issuers' Web sites would not facilitate comparison shopping by consumers, as these terms are offered only to a limited group of consumers for a short period of time. Including these agreements could mislead consumers into believing that these terms are available more generally. In addition, posting these agreements could make issuer testing strategies transparent to competitors.

The Bureau seeks comment on whether it should impose a time limit on how long an issuer can avail itself of the product testing exception, and if so, what that time limit might be, or whether the Bureau should adopt other conditions on use of the product testing exception. The Bureau is concerned about possible circumvention of the proposed requirements in § 1005.19(b) via the product testing exception. For example, the Bureau is concerned about the possibility that issuers might deem small payroll card account programs part of a product test, even when all or substantially all of a particular employer's employees are enrolled in the payroll card account program. The Bureau seeks comment on whether it should specify that if all, or substantially all, of a company's employees are enrolled in a payroll card account program (excluding programs for the employees of the issuer or a service provider to the issuer, such as a program manager), that program does not qualify for the product testing exception.

19(b)(6) Form and Content of Agreements Submitted to the Bureau

Proposed § 1005.19(b)(6) would set forth the form and content requirements for prepaid account agreements submitted to the Bureau.

19(b)(6)(i) Form and Content Generally

The Bureau is proposing § 1005.19(b)(6)(i) to provide that each prepaid account agreement must contain the provisions of the agreement and the fee information in effect as of the last business day of the preceding calendar quarter. Proposed comment 19(b)(6)–1 would provide the following example to aid in determining the ''as of'' date of an agreement: On June 1, an issuer decides to decrease the out-of-network ATM withdrawal fee associated with one of the agreements it offers to the public. The change in that fee will become effective on August 1. If the issuer submits the agreement to the Bureau on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower out-of-network ATM withdrawal fee because that lower fee was not in effect on June 30, the last business day of the preceding calendar quarter. Proposed comment 19(b)(6)–1 is similar to Regulation Z comment 58(c)(8)–1.

Proposed § 1005.19(b)(6)(i) would also state that agreements must not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number. Further, as explained in proposed § 1005.19(b)(6)(i), the following would not be deemed to be part of the agreement for purposes of proposed § 1005.19, and therefore are not required to be included in submissions to the Bureau: (*1*) Ancillary disclosures required by State or Federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act; (*2*) solicitation or marketing materials; (*3*) periodic statements; and (*4*) documents that may be sent to the consumer along with the prepaid account or prepaid account agreement such as a cover letter, a validation sticker on the card, or other information about card security. Finally, proposed § 1005.19(b)(6)(i) would state that agreements must be presented in a clear and legible font.

Proposed § 1005.19(b)(6)(i) generally mirrors the Regulation Z provisions in § 1026.58(c)(8)(i) regarding the form and content of agreements that would be submitted to the Bureau. This paragraph excludes, however, two additional items listed in § 1026.58(c)(8)(i)(C) that are not deemed to be part of a credit card agreement—ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements, and offers for credit insurance or other optional products and other similar advertisement—because the Bureau does not believe these items are relevant in the prepaid account context. Proposed § 1005.19(b)(6)(i) is not intended to provide an exhaustive list of the ancillary State and Federal law disclosures that are not deemed to be part of an agreement under proposed § 1005.19. As indicated by the use of the phrase ''such as,'' the listed disclosures are merely examples of ''ancillary disclosures required by Federal or State law.'' The Bureau does not believe it is feasible to include in this paragraph a comprehensive list of all such disclosures, as such a list would be extensive and would change as State and Federal laws and regulations are amended. The Bureau notes that an issuer would not be prohibited by this or any other provision of proposed § 1005.19 from choosing to include these items in submitted agreements.

19(b)(6)(ii) Fee Information

The Bureau is proposing § 1005.19(b)(6)(ii) to provide that fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. The agreement or addendum thereto must contain all of the fee information, which is defined by proposed § 1005.19(a)(3) as the information listed for the long-form fee disclosure in proposed § 1005.18(b)(2)(ii), as discussed above.

Proposed § 1005.19(b)(6)(ii) deviates from the provisions governing pricing information in § 1026.58(c)(8)(ii) in that the proposed language permits, but does not require, prepaid account fee information to be provided in an addendum to the prepaid account agreement. The Bureau requests comment on whether it should require, rather than permit, prepaid account fee information in an addendum to the agreement and whether such a requirement might aid consumers in

more easily locating fee information in prepaid account agreements.

Proposed § 1005.19(b)(6)(ii) also omits the provisions contained in § 1026.58(c)(8)(ii)(B) and (C) that address how to disclose pricing information that varies from one cardholder to another (such as annual percentage rates) and how to disclose variable rates and margins. Because prepaid account fees and terms currently do not vary between consumers based on creditworthiness or other factors in the same way that credit card account pricing and other terms do, the Bureau does not believe these provisions are either applicable or necessary with respect to prepaid account agreements. The Bureau likewise has not proposed an equivalent to § 1026.58(c)(8)(iii) which allows for an optional variable terms addendum that allows provisions other than those related to pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness, State of residence or other factors to be set forth in a single addendum separate from the pricing information addendum. The Bureau has likewise not proposed a comment equivalent to that of 58(c)(8)–2 regarding pricing information, nor that of 58(c)(8)–4 regarding the optional variable terms addendum. The Bureau solicits comment on whether, in light of the revisions proposed herein regarding credit accessed by prepaid accounts, it should incorporate provisions similar to § 1026.58(c)(8)(ii)(B), (8)(ii)(C), (8)(iii) or comments 58(c)(8)–2 or 58(c)(8)–4 into proposed § 1005.19.

With credit cards, issuers offer a range of terms and conditions and issuers may make those terms and conditions available in a variety of different combinations, particularly with respect to items included in the pricing information. In Regulation Z, pricing information is required to be set out in a separate pricing information addendum, regardless of whether pricing information is also contained in the main text of the agreement. The Board concluded that it could be difficult for consumers to find pricing information if it is integrated into the text of the credit card agreement. The Board believed that requiring pricing information to be attached as a separate addendum would ensure that this information is easily accessible to consumers.[320] The Bureau does not believe that prepaid account agreements vary in the same manner. The Bureau also believes that if prepaid account agreements contain the long form fee disclosure required by proposed § 1005.18(b)(2)(ii) (*see* Sample Form A–10(e)), consumers would be able to easily locate such fee information within a prepaid account agreement and to compare fee information across agreements.

Proposed comment 19(b)(6)–2, which is largely similar to Regulation Z comment 58(c)(8)–3, would explain that fee agreement variations do not constitute separate agreements. Fee information that may vary from one consumer to another depending on the consumer's State of residence or other factors must be disclosed by setting forth all the possible variations or by providing a range of possible variations. Two agreements that differ only with respect to variations in the fee information would not constitute separate agreements for purposes of proposed § 1005.19. For example, an issuer offers two types of prepaid accounts that differ only with respect to the monthly fee. The monthly fee for one type of account is $4.95, while the monthly fee for the other type of account is $0 if the consumer regularly receives direct deposit to the prepaid account. The provisions of the agreement and fee information for the two types of accounts are otherwise identical. The issuer should not submit to the Bureau one agreement with fee information listing a $4.95 monthly fee and another agreement with fee information listing a $0 monthly fee. Instead, the issuer should submit to the Bureau one agreement with fee information listing possible monthly fees of $4.95 or $0, including the explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

19(b)(6)(iii) Integrated Agreement

The Bureau is proposing § 1005.19(b)(6)(iii) to prohibit issuers from providing provisions of the agreement or fee information to the Bureau in the form of change-in-terms notices or riders (other than the optional fee information addendum). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addendum, as appropriate. Proposed comment 19(b)(6)–3 would provide the following example illustrating this requirement: It would be impermissible for an issuer to submit to the Bureau an agreement in the form of a terms and conditions document dated January 1, 2015, four subsequent change in terms notices, and two addenda showing variations in fee information. Instead, the issuer must submit a document that integrates the changes made by each of the change in terms notices into the body of the original terms and conditions document and a single optional addendum displaying variations in fee information.

Proposed § 1005.19(b)(6)(iii) is similar to § 1026.58(c)(8)(iv) in that they both prohibit providing agreements and fee (or pricing) information to the Bureau in the form of change-in-terms notice or riders, but the proposed language has been modified to reflect that prepaid account fee information may, but is not required to be, provided in an optional fee information addendum. Proposed comment 19(b)(6)–3 is similar to Regulation Z comment 58(b)–5.

As discussed previously, the Bureau believes that permitting issuers to submit agreements that include change-in-terms notices or riders containing amendments and revisions would be confusing for consumers and would greatly lessen the usefulness of the agreements posted on the Bureau's Web site. In addition, the Bureau believes that prepaid account issuers customarily incorporate revised terms into their prepaid account agreements on a regular basis.

The Board believed that there could potentially be significant burden on issuers for updating credit card agreements following changes in terms because of the potential variety in terms offered under a single agreement.[321] The Bureau does not believe a similar burden exists for prepaid account agreements because a single prepaid account agreement would not contain a variety of variable terms predicated on the consumer's credit worthiness or other factors. In addition, the Bureau does not believe that prepaid account issuers modify the terms of prepaid account agreements as frequently as credit card issuers do. The Bureau nonetheless seeks comment on this aspect of the proposal.

19(b)(7) Bureau Posting of Prepaid Account Agreements

The Bureau is proposing § 1005.19(b)(7) to provide that the Bureau shall receive prepaid account agreements submitted by prepaid account issuers pursuant to proposed § 1005.19(b), and shall post such agreements on a publicly-available Web site established and maintained by the Bureau. There is no equivalent to proposed § 1005.19(b)(7) in § 1026.58 as the Bureau's posting of credit card agreements it receives is directed by TILA section 122(d). 15 U.S.C. 1632(d).

[320] 75 FR 7658, 7769 (Feb. 22, 2010).

[321] *See* 75 FR 7658, 7770 (Feb. 22, 2010).

19(c) Posting of Agreements Offered to the Public

The Bureau is proposing § 1005.19(c) to require an issuer to post and maintain on its publicly available Web site the prepaid account agreements that the issuer would be required to submit to the Bureau under proposed § 1005.19(b). Agreements posted pursuant to proposed § 1005.19(c) must conform to the form and content requirements for agreements submitted to the Bureau specified in proposed § 1005.19(b)(6)(i)(B) through (D) and may be posted in any electronic format that is readily usable by the general public. Agreements posted pursuant to proposed § 1005.19(c) must be accurate and updated whenever changes are made. Agreements must be placed in a location that is prominent and readily accessible by the public and must be accessible without submission of personally identifiable information.

Section 1026.58(d)(1) requires credit card issuers to update the agreements posted on their Web sites at least as frequently as the quarterly schedule required for submission of agreements to the Bureau, but permits an issuer to update its agreements more frequently if it so chooses. For Regulation Z, the Board considered a consumer group comment requesting that the online agreement be updated within a specific period of time no greater than 72 hours. The Board declined to adopt such a requirement because it believed that the burden to card issuers of updating agreements in such a short time would outweigh the benefit. In addition, the Board noted that if a consumer applies or is solicited for a credit card, the consumer will receive the updated disclosure under existing rules in Regulation Z subpart B.[322] The Bureau believes that prepaid account issuers generally update their agreements posted online as changes are made. The Bureau does not believe that prepaid account issuers face the same burdens as credit card issuers in updating prepaid account agreements posted online because the terms of such agreements do not vary in the same manner as credit card agreement terms, which may offer a variety of rates and fees depending on the creditworthiness of the consumer. Thus, for prepaid account agreements, the Bureau is proposing in § 1005.19(c)(3) that prepaid account agreements posted only be accurate and that issuers update their agreements whenever changes are made. The Bureau seeks comment on whether this portion of the proposal aligns with current industry practice and whether the Bureau should nonetheless specify a specific timeframe for updating prepaid account agreements posted online.

Proposed comment 19(c)–1 would explain that an issuer's obligation to post and maintain prepaid account agreements on its Web site pursuant to proposed § 1005.19(c) is distinct from that of § 1005.7, which requires an issuer to provide certain disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account, as well as the change in terms notice required under § 1005.8(a). This requirement is also distinct from that of proposed § 1005.18(b)(2)(ii), which would require issuers to make the long form disclosure available to consumers prior to prepaid account acquisition and which, depending on the methods an issuer offers prepaid accounts to consumers, may require posting of the long form disclosure on the issuer's Web site. If, for example, an issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception under proposed § 1005.19(b)(4), the issuer is not required to post and maintain any agreements on its Web site under proposed § 1005.19(c). The issuer would still be required to provide each individual consumer with access to his or her specific prepaid account agreement under proposed § 1005.19(d), discussed below, by posting and maintaining the agreement on the issuer's Web site or by providing a copy of the agreement upon the consumer's request. The issuer may also be required to post the long form disclosure required by proposed § 1005.18(b)(2)(ii) online as well, depending on the methods by which the issuer offers prepaid accounts to consumers.

Proposed comment 19(c)–2 would explain that if an issuer provides consumers with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is considered to maintain that Web site for purposes of proposed § 1005.19. Such a third-party Web site is deemed to be maintained by the issuer for purposes of proposed § 1005.19(c) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide consumers with access to account-specific information through a third-party Web site can comply with proposed § 1005.19(c) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party Web site in accordance with proposed § 1005.19(c).

Proposed § 1005.19(c) is similar to § 1026.58(d), but does not include provisions regarding private label credit cards, as discussed above. Specifically, the Bureau is not proposing an equivalent to the provision addressing the Web site to be used for posting private label credit card agreements in § 1026.58(d)(1) as well as § 1026.58(d)(4) requiring quarterly updates of credit card agreements posted on card issuers' Web sites, as discussed above. Proposed comment 19(c)–1 is similar to Regulation Z comment 58(d)–1, although it has been modified to distinguish the requirement in proposed § 1005.19(c) from other disclosure-related obligations in Regulation E. Proposed comment 19(c)–2 mirrors Regulation Z comment 58(d)–2, although both it and proposed comment 19(c)–1 have been modified and to remove the portions discussing the private label credit card exception. An equivalent to Regulation Z comment 58(d)–3, regarding private label credit card plans, has likewise been omitted.

19(d) Agreements for All Open Accounts

19(d)(1) Availability of Individual Consumer's Prepaid Account Agreement

The Bureau is proposing § 1005.19(d)(1) to state that, with respect to any open prepaid account, unless the prepaid account agreement is provided to the Bureau pursuant to proposed § 1005.19(b) and posted to the issuer's publicly available Web site pursuant to proposed § 1005.19(c), an issuer must either post and maintain the consumer's agreement on its Web site, or promptly provide a copy of the consumer's agreement to the consumer upon the consumer's request. Unlike agreements posted pursuant to proposed § 1005.19(c), which must be maintained on an issuer's publicly available Web site, agreements posted pursuant to proposed § 1005.19(d) may be housed on a portion of the issuer's Web site that is available to consumers once they have logged into their accounts. If the issuer makes an agreement available upon request, the issuer must provide the consumer with the ability to request a copy of the agreement by telephone. The issuer must send to the consumer

[322] 75 FR 7658, 7772 (Feb. 22, 2010).

a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request.

Proposed comment 19(d)–1, which is similar to Regulation Z comment 58(e)–1, would provide examples illustrating the requirements of proposed § 1005.19(d)(1). An issuer that is not required to submit agreements to the Bureau because it qualifies for the de minimis exception under proposed § 1005.19(b)(4) would still be required to provide consumers with access to their specific agreements under proposed § 1005.19(d). Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Bureau under proposed § 1005.19(b), but would still need to be provided to the consumer to whom it applies under proposed § 1005.19(d).

The Bureau does not believe it would be appropriate to apply the de minimis exception, the product testing exception, or the exception for accounts not currently offered to the public to the requirement that issuers provide consumers with access to their specific prepaid account agreement through the issuer's Web site. In addition, the Bureau believes that, for the reasons discussed above, posting prepaid account agreements that are not currently offered to the public on the Bureau's Web site would not be beneficial to consumers. However, the Bureau believes that the benefit of increased transparency of providing an individual cardholder access to his or her specific prepaid account agreement is substantial regardless of whether the cardholder's agreement continues to be offered by the issuer. The Bureau believes that this benefit outweighs the administrative burden on issuers of providing such access, and the Bureau therefore is not proposing to exempt agreements that are not offered to the public from the requirements of proposed § 1005.19(d)(1). Similarly, the proposal requires that prepaid account issuers with fewer than 3,000 open prepaid accounts would not be required to submit agreements to the Bureau. However, the Bureau believes that the benefit of increased transparency associated with providing an individual cardholder with access to his or her specific prepaid account agreement is substantial regardless of the number of the issuer's open accounts. The Bureau believes that this benefit of increased transparency for consumers outweighs the administrative burden on issuers of providing such access, and the Bureau therefore is not proposing to apply the de minimis exception to the requirements in proposed § 1005.19(d)(1).

The Board believed that the administrative burden associated with posting each cardholder's credit card agreement on the issuer's Web site might be substantial for some issuers, particularly smaller institutions with limited information technology resources, and thus gave issuers the option of providing copies of agreements in response to cardholders' requests. The ability to provide agreements in response to a request made via telephone or Web site would ensure that cardholders still be able to obtain copies of their credit card agreements promptly.[323]

The Bureau does not know whether similar challenges are faced by prepaid account issuers, particularly for issuers that would qualify for the de minimis or product testing exceptions. The Bureau is thus proposing to similarly allow prepaid account issuers to satisfy the requirements of proposed § 1005.19(d)(1) by providing a copy of a consumer's prepaid account agreement to the consumer upon the consumer's request. The Bureau requests comment on whether this allowance is necessary or if prepaid account issuers should all be required to post agreements on their Web sites. The Bureau also requests comment on whether issuers should be required by this regulation to provide copies of prepaid account agreements to all consumers upon request, regardless of whether the agreements are also posted online.

Section 1026.58(e)(1) requires a credit card issuer to accept cardholders' requests for copies of their credit card agreements via the issuer's Web site as well as by telephone. The Bureau believes that prepaid account issuers will generally post prepaid account agreements to their Web sites pursuant to proposed § 1005.19(d)(1)(i), even if the agreement is posted in a location that is only accessible to prepaid account consumers after they have logged in to their accounts. The Bureau thus expects that few, if any, issuers would be required to provide agreements in response to a consumer's request pursuant to proposed § 1005.19(d)(1)(ii). The Bureau therefore does not believe it is necessary to require issuers to receive requests via the issuers' Web sites, although issuers could certainly allow consumers to make requests in that manner if they so choose.

Section 1026.58(e)(1)(ii) also requires credit card issuers to allow cardholders to request copies of their agreements by calling a readily available telephone line the number for which is displayed on the issuer's Web site and clearly identified as to its purpose. Regulation Z comment 58(e)–2 provides additional clarification as to what is required to satisfy the ''readily available telephone line'' standard. Because the Bureau is proposing to require prepaid account issuers to provide telephone numbers for a variety of other purposes,[324] the Bureau does not believe it is necessary to provide the same level of specificity regarding the telephone number to be used to request a copy of a prepaid account agreement pursuant to proposed § 1005.19(d)(1)(ii) nor to provide a comment equivalent to that of Regulation Z comment 58(e)–2.

Section 1026.58(e)(1) also allows a credit card issuer, in response to such a cardholder's request for a copy of the cardholder's agreement, to provide that agreement to the cardholder electronically, such as by posting a copy of the agreement to its Web site in a location that is accessible by the cardholder. Because the Bureau expects that few, if any, issuers would be required to provide agreements upon request pursuant to proposed § 1005.19(d)(1)(ii), as discussed above, it does not appear to be necessary or useful to allow an issuer to post a prepaid account agreement to a consumer's online account in response to a consumer's request. The Bureau is thus not proposing to permit issuers to provide copies of prepaid account agreements electronically in response to consumers' requests, except as permitted in proposed § 1005.19(d)(2)(vi), discussed below. In addition, a provision corresponding to § 1026.58(e)(2), containing a special provision for issuers without interactive Web sites, has not been included in proposed § 1005.19, as the Bureau is not aware of any prepaid issuers that do not maintain Web sites (or do not use a third-party service provider to maintain such a Web site) from which consumers can access specific information about their individual prepaid accounts and thus does not believe such a provision is necessary for prepaid accounts. The Bureau is not proposing an equivalent to Regulation Z comment 58(e)–3, which provides examples regarding the deadline for providing copies of requested agreements, as the Bureau does not believe such examples are necessary given the more limited ways that issuers are permitted to respond to

[323] *See* 74 FR 54124, 54192 (Oct. 21, 2009).

[324] *See, e.g.,* proposed § 1005.18(b)(7) (requiring disclosure of a telephone number on the prepaid account access device, to be used to contact the financial institution about the prepaid account).

requests under proposed § 1005.19(d)(1)(ii).

Section 1026.58(e)(ii) provides that the card issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request. The Board originally proposed requiring issuers to respond to such a request within 10 business days, but some commenters contended that 10 business days would not provide sufficient time to respond to a request. The commenters noted that they would be required to integrate changes in terms into the agreement and providing pricing information, which, particularly for older agreements that may have had many changes in terms over the years, could require more time. The Board believed it would be reasonable to provide more time for an issuer to respond to a cardholder's request for a copy of the credit card agreement, and thus allowed for 30 days in the final rule.[325]

The Bureau does not believe that issuers would face the same challenges in integrating changes in terms into prepaid account agreements in the same manner as with credit card agreements. The Bureau believes that requiring issuers to provide prepaid account agreements within five business days gives issuers adequate time to respond to requests while providing consumers with prompt access to their prepaid account agreements. The Bureau solicits comment regarding whether this period should be shorter or longer.

19(d)(2) Form and Content of Agreements

The Bureau is proposing § 1005.19(d)(2) to address the form and content requirements for agreements provided to consumers pursuant to proposed § 1005.19(d)(1). Proposed § 1005.19(d)(2)(i) would state that, except as otherwise provided in proposed § 1005.19(d), agreements posted on the issuer's Web site pursuant to proposed § 1005.19(d)(1)(i) or sent to the consumer upon the consumer's request pursuant to proposed § 1005.19(d)(1)(ii) must conform to the form and content requirements for agreements submitted to the Bureau as specified in proposed § 1005.19(b)(6). Proposed § 1005.19(d)(2)(ii) provides that if the issuer posts an agreement on its Web site pursuant to proposed § 1005.19(d)(1)(i), the agreement may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the consumer. Proposed § 1005.19(d)(2)(iii) would state that agreements posted or otherwise provided pursuant to proposed § 1005.19(d) may contain personally identifiable information relating to the consumer, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the consumer or other authorized persons.

Proposed § 1005.19(d)(2)(iv) would state that agreements posted or otherwise provided pursuant to proposed § 1005.19(d) must set forth the specific provisions and fee information applicable to the particular consumer. Proposed § 1005.19(d)(2)(v) would provide that agreements posted pursuant to proposed § 1005.19(d)(1)(i) must be accurate and updated whenever changes are made. Agreements provided upon consumer request pursuant to proposed § 1005.19 (d)(1)(ii) must be accurate as of the date the agreement is mailed or electronically delivered to the consumer. Proposed § 1005.19(d)(2)(vi) would state that agreements provided upon consumer request pursuant to proposed § 1005.19(d)(1)(ii) must be provided by the issuer in paper form, unless the consumer agrees to receive the agreement electronically.

Proposed § 1005.19(d)(2) is generally similar to § 1026.58(e)(3), except that it contains modifications to reflect the changes in proposed § 1005.19(d)(1) regarding the methods in which prepaid account agreements may be provided to consumers pursuant to proposed § 1005.19(d). Proposed § 1005.19(d)(2) does not, however, include the provision contained in § 1026.58(e)(3)(iv) that requires agreements for all open prepaid accounts that are posted to a card issuer's Web site or otherwise provided to consumers to contain complete and accurate provisions and pricing information as of a date no more than 60 days prior to the date on which the agreement is posted to the card issuer's Web site pursuant to § 1026.58(e)(1)(i) or the date the cardholder's request is received under § 1026.58(e)(1)(ii) or (e)(2). As described above, the Bureau does not believe that updating prepaid account agreements is as complex as for credit card agreements, nor that prepaid account agreements are modified as frequently as credit card agreements may be. Therefore, the Bureau does not believe that prepaid account issuers should be permitted to provide agreements to consumers that are as much as 60 days out of date. Instead, pursuant to proposed § 1005.19(d)(2)(v), the Bureau is proposing to require that agreements posted online be accurate and updated when changes are made, and that agreements provided upon consumer request be accurate as of the date the agreement is mailed or electronically delivered to the consumer.

19(e) E-Sign Act Requirements

The Bureau is proposing § 1005.19(e) to state that, except as otherwise provided in proposed § 1005.19, issuers may provide prepaid account agreements in electronic form under proposed § 1005.19(c) and (d) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Because TILA section 122(d) specifies that a credit card issuer must provide access to cardholder agreements on the issuer's Web site, the Board did not believe that the requirements of the E-Sign Act applied to the regulations now contained at § 1026.58.[326] The Bureau is proposing § 1005.19(e) for ease of administration of these requirements and for consistency with § 1026.58(f).

The Bureau requests comment on proposed § 1005.19 generally, including whether it should require submission and posting of agreements at all and whether the procedures proposed herein are appropriate.

Other Regulation E Subpart A Provisions Applicable to Prepaid Accounts

Because the Bureau is proposing to bring prepaid accounts within the definition of account generally under Regulation E, the requirements of Regulation E would apply to prepaid accounts except as modified or supplemented by this proposal. Except as otherwise addressed by this proposal, the Bureau envisions that such provisions would extend to prepaid accounts in the same manner they currently apply to payroll card accounts. Such requirements include, but are not limited to, § 1005.5 regarding the issuance of access devices, § 1005.8(a) regarding change in terms notices, § 1005.10(a) through (d) regarding preauthorized transfers to and from consumers' accounts, and § 1005.14 regarding electronic fund transfer service providers that do not hold consumers' accounts.

The Bureau requests comment generally on the extension of these and other provisions in Regulation E to prepaid accounts. The Bureau also seeks

[325] 75 FR 7658, 7773 (Feb. 22, 2010).

[326] *See* 74 FR 54124, 54193 (Oct. 21, 2009).

comment on whether any of these or other provisions in Regulation E provisions warrant specific modification for prepaid accounts.

Appendix A–5 Model Clauses for Government Benefit Accounts (§ 1005.15(e)(1) and (2))

Existing appendix A–5 provides model language for government agencies that offer accounts for distributing government benefits to consumers electronically; this model language reflects the modifications made to certain Regulation E provisions by existing § 1005.15. The Bureau is proposing to relabel appendix A–5 as *Model Clauses for Government Benefit Accounts (§ 1005.15(e)(1) and (2))* and to revise the heading of paragraph (a) for clarity. The Bureau is also proposing to revise the text of paragraph (a) of appendix A–5, which currently explains to consumers how to obtain information about account balances and account histories, to note that the consumer's balance information, along with an 18 month history of the consumer's account transactions, is available online. The Bureau also proposes to revise the paragraph regarding a written transaction summary to correspond with the proposed revised language for prepaid accounts in paragraph (a) of appendix A–7, to state that the consumer has a right to at least 18 months of written history of account transactions by calling or writing to the agency (or its designee). The paragraph also states that the consumer will not be charged a fee for such information unless the consumer requests it more than once per month. The paragraph retains the existing optional bracketed language stating that the consumer may also request such a history by contacting his or her caseworker.

The Bureau is similarly proposing to revise paragraph (b) of appendix A–5, which sets forth model clauses regarding disclosure of error resolution procedures for government agencies that provide alternative means of obtaining account information. The Bureau is proposing to revise the section citation in the paragraph heading, and to revise the first paragraph of paragraph (b) to correspond with the proposed revised language for prepaid accounts in paragraph (b) of appendix A–7. Specifically, the Bureau proposes to remove the sentence stating that the agency must hear from the consumer no later than 60 days after the consumer learns of the error, and to add language stating that the agency must allow the consumer to report an error until 60 days after the earlier of the date the consumer electronically accesses his or her account, if the error could be viewed in the electronic history, or the date the agency sent the first written history on which the error appeared. The paragraph would also state that the consumer may request a written transaction history at any time by calling or writing, or optionally by contacting the consumer's caseworker.

The Bureau requests comment on these proposed modifications to appendix A–5 and whether any additional modifications should be made. In particular, the Bureau solicits comment on whether it is necessary to retain the optional bracketed language that currently appears in paragraph (a) of appendix A–5, and that is mirrored in paragraph (b), directing consumers to request a written summary of transactional history by contacting the consumer's caseworker. The Bureau is particularly interested in whether any government benefit account programs use this optional language in their disclosures and whether inclusion of such language reduces consumer confidence in government benefit accounts or the privacy of consumers' account histories.

Appendix A–7 Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))

Existing appendix A–7 provides model clauses for financial institutions that offer payroll card accounts; these clauses reflect the modifications made by the Payroll Card Rule to certain Regulation E provisions in existing § 1005.18. To reflect the proposed expansion of § 1005.18 to cover prepaid accounts, the Bureau is proposing to revise the heading for appendix A–7 as well as the heading for paragraph (a) of appendix A–7. The Bureau is also proposing to revise paragraph (a) of appendix A–7, which explains to consumers how to obtain account information for payroll card accounts, to change the term payroll card account to prepaid account, and to provide that at least 18 months of electronic and written account transaction history is available to the consumer, rather than 60 days, as proposed in § 1005.18(c)(1)(ii) and (iii). The Bureau also proposes to add a sentence at the end of paragraph (a) of appendix A–7 to inform consumers that they cannot be charged for requesting such written account transaction history, unless requests are made more than once per month. As discussed above, the Bureau is proposing to allow financial institutions to assess a fee or charge for subsequent requests for written account information made in a single calendar month, in proposed comment 18(c)–3.i.

The Bureau is similarly proposing to revise the heading of paragraph (b), and to revise the text of paragraph (b) of appendix A–7, which sets forth model clauses regarding disclosure of error resolution procedures for financial institutions that provide alternative means of obtaining payroll card account information, to change the term payroll card account to prepaid account and to renumber the section citation in the heading.

The Bureau is also proposing to add a new paragraph (c) at the end of appendix A–7, for use by a financial institution that chooses, as explained in proposed comment 18(e)–4, not to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for prepaid accounts which it has not completed its collection of consumer identifying information and identity verification.

This model language would state that it is important for consumers to register their prepaid accounts as soon as possible and that until a consumer registers his or her prepaid account, the financial institution is not required to research or resolve errors regarding the consumer's account. To register an account, the consumer is directed to a Web site and telephone number. The model language explains that the financial institution will ask for identifying information about the consumer (including full name, address, date of birth, and Social Security Number or government-issued identification number), so that it can verify the consumer's identity. Once the financial institution has done so, it will address the consumer's complaint or question as described earlier in appendix A–7.[327]

Appendix A–10 Model Forms and Sample Forms for Financial Institutions Offering Prepaid Accounts (§ 1005.15(c)(2) and § 1005.18(b))

The Bureau is proposing Model Forms A–10(a) through (d) and (f) and Sample Forms A–10(e) and (g) in appendix A in relation to the disclosure requirements set forth in proposed § 1005.15(c)(2) and proposed § 1005.18(b). Proposed Model Form A–10(a)would set forth the short form disclosure for government benefit accounts as described in proposed § 1005.15(c)(2). Proposed Model Form A–10(b) would set forth the short form disclosure for payroll card accounts as described in proposed § 1005.18(b)(2)(i)(A). Proposed Model Form A–10(c) would set forth the short

[327] The Bureau tested a version of this proposed model language with consumers. *See* ICF Report, at 23.

form disclosure for prepaid accounts that could offer an overdraft service or other credit feature as described in proposed § 1005.18(b)(2)(i)(B)(*9*). Proposed Model Form A–10(d) would set forth the short form disclosure for prepaid accounts that would not offer an overdraft service or other credit feature as described in proposed § 1005.18(b)(2)(i)(B)(*9*). Proposed Model Form A–10(f) would set forth the short form disclosure for prepaid accounts that offer multiple service plans and choose to disclose them on one short form disclosure as described in proposed § 1005.18(b)(3)(iii)(B)(*1*).

Proposed Sample Form A–10(e) would set forth the long form disclosure for prepaid accounts as described in proposed § 1005.18(b)(3)(iii)(A). Proposed Sample Form A–10(g) would set forth the long form disclosure for prepaid accounts that offer multiple service plans as described in proposed § 1005.18(b)(3)(iii)(B)(*2*).

Subpart B—Requirements for Remittance Transfers

Section 1073 of the Dodd-Frank Act added section 919 to EFTA to establish consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. Among other things, EFTA section 919 requires the following protections for covered transactions sent by remittance transfer providers: (i) The provision of disclosures prior to and at the time of payment by the sender of the transfer; (ii) cancellation and refund rights; and (iii) the investigation and remedy of errors by providers. It also establishes liability standards for providers for the acts of their agents. On February 7, 2012, the Bureau published a final rule implementing these provisions largely in new subpart B of Regulation E.[328]

The Remittance Rule only applies to those entities that are remittance transfer providers. A remittance transfer provider is any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. § 1005.30(f). A remittance transfer is the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. § 1005.30(e)(1). The term remittance transfer applies regardless of whether the sender holds an account with the provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in § 1005.3(b). The Remittance Rule applies to remittance transfers sent to and from prepaid products. *See generally,* § 1005.30(c) and (e), and comments 30(c)–2.iii, 30(e)–2.ii, 30(e)–3.i.C, and 30(h)(3).

Section 1005.30 Remittance Transfer Definitions

30(g) Sender

The Bureau proposes to make a conforming change to comment 30(g)–3. Currently, the comment contains a reference to an exception from the definition of account for bona fide trust accounts. As discussed earlier in this section-by-section analysis, the Bureau is proposing to renumber the exception for bona fide trust accounts as § 1005.2(b)(2). Accordingly, the Bureau is proposing conforming change to comment 30(g)–3 to reflect the proposed renumbering.

As discussed above, the Remittance Rule applies to remittance transfers sent to and from prepaid products. The Bureau does not intend this proposed rule to alter the applicability of the Remittance Rule to transfers sent to and from prepaid products. At the same time, the Bureau welcomes comment on the proposed rule's potential implications for the Remittance Rule. As discussed in the section-by-section analysis above, with certain exceptions such as payroll card accounts, accounts for the receipt of certain government benefits, and gift cards (or certain other types of limited purpose cards), prepaid products generally have not been covered under current subpart A of Regulation E. In proposing to expand the current definition of account in Regulation E, additional prepaid products such as GPR cards and certain digital wallets would fall within the definition of account under Regulation E. Accordingly, the Bureau seeks comment on whether additional clarification or guidance is necessary with respect to the Remittance Rule.

Regulation Z

Overview of Bureau's Approach to Its Regulation Z Proposal

In developing this proposal, the Bureau has considered whether and how to regulate credit accessed through a prepaid account. Specifically, the Bureau has considered potential transactions where financial institutions allow consumers to overdraw their prepaid accounts through an overdraft service, a draw from a linked line of credit, or by pushing credit onto a specified prepaid account to cover transactions for which there are insufficient or unavailable funds. As is explained in detail below, the Bureau proposes to treat most credit plans for which finance charges are imposed as ''open-end (not-home secured) credit plans'' accessed by a ''credit card'' under Regulation Z, and thus subject to credit card protections. In addition and as is explained above, the Bureau is also proposing to revise provisions in Regulation E regarding compulsory use (proposed § 1005.10(e)(1)) and to adopt other rules specific to prepaid accounts that offer credit features (proposed §§ 1005.12(a) and 1005.18(b)(2)(i)(B)(*9*), (b)(2)(ii)(B) and (g)) to provide consumers with greater control over how they enroll in a credit feature and pay any credit balances associated with their prepaid accounts, and also to prevent evasion of the Regulation Z protections.

In its evaluation of credit features offered in connection with prepaid accounts, the Bureau has carefully considered a variety of information and factors, including existing relevant consumer protection regulations governing overdraft services and a range of credit products subject to Regulation Z; consumers' use of those features to the extent offered in today's market, consumer expectations, and understanding of prepaid accounts and credit features offered in connection with prepaid accounts (including through discussion in the Bureau's consumer testing); review of comments received from industry, consumers, and consumer advocacy groups in response to the Prepaid ANPR; analysis of data from the Bureau's overdraft research on deposit accounts and other available research; further outreach to industry, consumer advocacy, and other groups; and ongoing market analysis.

The bulk of the feedback the Bureau has received has focused specifically on the permissibility of overdraft services on prepaid accounts. In the Prepaid ANPR, the Bureau noted that while most GPR cards do not offer overdraft features, some do allow cardholders to opt in to an overdraft program in which the issuer may authorize overdrafts and charge an overdraft transaction fee.[329] The Bureau then sought public input on the costs, benefits, and consumer protection issues related to any credit features that financial institutions may offer on GPR cards.

The Bureau received a significant number of comments on the issue of credit features and prepaid accounts. Most industry commenters encouraged the Bureau not to adopt regulations that

[328] 77 FR 6194 (Feb. 7, 2012). This final rule was subsequently amended. *See* 77 FR 40459 (July 10, 2012), 77 FR 50244 (Aug. 20, 2012), 78 FR 6025 (Jan. 29, 2013), 78 FR 30662 (May 22, 2013), 78 FR 49365 (Aug. 14, 2013), and 79 FR 55970 (Sept. 18, 2014) (collectively, the Remittance Rule).

[329] 77 FR 30923, 30925 (May 24, 2012).

would limit these credit features. In particular, commenters stated that overdraft for prepaid accounts should function as it does for accounts with linked debit cards—*i.e.,* subject to the current Regulation E opt-in framework for overdraft. Commenters argued that to the extent the Bureau wants to treat prepaid accounts as transaction account substitutes, they should be subject to the same regulatory requirements (and exceptions) as those accounts, including opt-in requirements for overdraft services. One trade association argued that it would be unfair for the Bureau to prohibit overdraft on prepaid cards while such features remain permitted on checking accounts. Some industry commenters argued that their customers want—or even need—access to short-term credit in connection with their GPR cards. Several other trade associations similarly argued that consumers want access to credit features on prepaid cards. They urged the Bureau to ensure that consumers understand such features, and they argued that the Bureau should conform regulations for such products to those that now exist for traditional deposit accounts in Regulations E, Z, and DD.

However, some industry commenters urged the Bureau not to permit credit features in connection with prepaid products. For example, one credit union stated that, in its opinion, only the funds loaded onto a prepaid card should be made available for transactions. A large financial institution similarly stated that, in its opinion, GPR cards should remain ''prepaid,'' without being linked or having access to overdraft services. A community bank stated that it was its practice to urge prepaid card customers who wanted overdraft services to transition into checking accounts, where it had systems in place to deal with the credit risk, and that it would not permit overdrafts on its prepaid products.

Most consumer advocates that commented also urged that the Bureau ban overdraft services in connection with prepaid products, because the overdraft fees and accumulating debt can be harmful. They argued that prepaid consumers are often more vulnerable or do not anticipate having to deal with credit on their prepaid accounts. These commenters explained that prepaid cards are marketed to and used by a variety of vulnerable groups, including low-income consumers, consumers with blemished credit histories, unbanked and underbanked consumers with limited access to traditional accounts, young consumers and students, undereducated consumers, public benefit recipients, and consumers who are trying to control their spending. Many of these vulnerable groups have, historically, struggled with credit products, including overdraft. Additionally, at least one consumer advocacy group commenter urged the Bureau to subject overdraft services on prepaid accounts to Regulation Z's rules for credit cards. Consumer group commenters further argued that permitting credit features on prepaid cards could eviscerate State payday and usury laws as well as protections for servicemembers, such as the MLA. Consumer advocacy group commenters also argued that application of existing opt-in overdraft rules, which currently apply to deposit accounts and payroll card accounts, would not prevent harm to consumers who use prepaid cards because opt-in does not, in the opinion of the commenters, protect vulnerable consumers from predatory lending. In addition, the consumer advocacy group commenters contended that credit features on prepaid products are unnecessary because less vulnerable consumers who can access credit will still have access to credit cards, deposit accounts that offer overdraft services, lines of credit, and other credit products.

The Bureau also received a number of comments from consumers who use prepaid products currently offering overdraft services. Most of these consumers voiced support for such services, stating that the overdraft fee charged by their prepaid products was less than the overdraft fees charged by banks, allowing them to bridge cash shortfalls between paychecks and fulfill other short-term credit needs. Most participants in the Bureau's consumer testing, however, expressed concern about overdraft programs and explained that they preferred prepaid products because they did not allow them to spend more than what was loaded onto the card.[330]

Since the close of the comment period for the Prepaid ANPR, the Bureau has continued its evaluation of prepaid products and related credit features, received additional feedback on this issue from interested parties, and the Bureau has also collected relevant data. In various forms, parties have submitted studies, additional comment, and other evidence to advocate for different approaches to regulating overdraft services and credit features on prepaid accounts. The Bureau has also reviewed data gathered by third parties and reported on by non-profit organizations and other government agencies.

[330] ICF Report at 6.

As explained in more detail below, the Bureau has concluded that the most appropriate approach is to propose to treat a broad range of credit features that financial institutions could offer in connection with prepaid accounts as subject to the rules governing credit cards under TILA, EFTA, and their implementing regulations. This includes programs structured as overdraft services; the Bureau is declining to extend existing exemptions under Regulation Z and Regulation E's compulsory use provision for overdraft services on deposit accounts to prepaid accounts. In this overview, the Bureau first addresses the application of Regulation Z's rules for open-end (not home-secured) credit plans and for credit cards to overdraft services and other credit features offered on prepaid accounts. Next, the Bureau discusses the benefits of applying these rules to all credit features offered on prepaid accounts. Finally, the Bureau provides section-by-section analysis of its specific proposed revisions to Regulation Z.

Credit Offered in Connection With Prepaid Cards—Including Overdraft Services—Satisfies TILA's Definition of Open-End Credit

The Bureau believes that a range of credit features offered in connection with prepaid accounts—including those features structured as overdraft services—should be subject to regulation as credit cards under TILA, EFTA, and their implementing regulations. Specifically, the Bureau believes that overdraft lines of credit, overdraft services, and similar credit features offered in connection with a prepaid account satisfy the definitions of (1) credit; (2) open-end (not home-secured) credit plan; and (3) credit cards under TILA and Regulation Z. Although the Board had chosen to exempt overdraft services (but not other forms of credit) offered in connection with traditional deposit accounts from Regulation Z, the Bureau chooses not to exercise its exception authority to expand further the scope of the existing exemptions to prepaid accounts.

As described above, TILA defines credit broadly as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. 15 U.S.C. 1602(f). Under the statute and Regulation Z, open-end credit exists where there is a plan in which the creditor reasonably contemplates repeated transactions; the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and the credit is generally replenished to the extent that

any outstanding balance is repaid. § 1026.2(a)(20). Closed-end credit is credit that does not meet the definition of open-end credit. § 1026.2(a)(10).

The Board subjected overdraft lines of credit in connection with traditional deposit accounts to Regulation Z requirements for open-end credit, but carved overdraft services on traditional deposit accounts out from Regulation Z through operation of the definitions of the terms ''creditor'' and ''finance charge.'' A creditor is generally defined under Regulation Z to mean 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. *See* § 1026.2(a)(17)(i).[331] In 1969, however, the Board adopted an exclusion to the definition of finance charge for ''charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.'' *See* § 1026.4(c)(3). Thus, the Board created an exception for financial institutions that offer overdraft services in connection with traditional deposit accounts if they do not agree in writing to pay the items and do not structure the repayment of the credit by written agreement in more than four installments. Under the exception, the fees charged for the overdrafts are not ''finance charges'' under Regulation Z, and thus a financial institution extending credit is not a ''creditor'' under Regulation Z because it is not charging a finance charge and is not structuring the repayment of the credit by written agreement in more than four installments. As discussed further below, the Bureau declines to extend this exception to include prepaid accounts. Absent this exception, the Bureau believes that overdraft services, like overdraft lines of credit and similar credit features that could be offered in connection with prepaid accounts, will meet the definitions of credit and open-end credit under TILA and Regulation Z if interest rates, transaction fees, or other types of finance charges are imposed in connection with the credit services.

Finance Charge

The Bureau analyzed whether it was reasonable to interpret ''credit'' to include when overdrafts are paid in relation to prepaid accounts. The Bureau believes it is because, in accordance with TILA's definition of credit, the payment of an overdraft represents the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. 15 U.S.C. 1602(f).

In its analysis, the Bureau examined whether a fee charged for an overdraft service (or other credit feature on a prepaid product) qualifies as a finance charge. TILA section 106(a) defines finance charge as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. 15 U.S.C. 1605(a). The plain language of the definition of credit in TILA section 103(e) covers situations in which a consumer makes a transaction which exceeds the funds in the consumer's account, and the bank elects to cover the transaction by advancing funds to the consumer which the consumer must repay. 15 U.S.C. 1602(f). This statutory language does not exempt overdraft services, including those that may be offered in connection with prepaid accounts.[332] The Bureau believes that fees levied for overdraft services or other credit features on prepaid accounts—such as interest charges, transaction charges, service charges, and annual or other periodic fees to participate in the credit program—generally represent finance charges. *See* section-by-section analysis of proposed § 1026.4(a), (b)(2), (c)(3) and (c)(4). Regulation Z defines ''finance charge'' as the cost of consumer credit as a dollar amount. The term includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. § 1026.4(a). The Bureau believes that fees that are levied for overdraft services are thus ''finance charges'' because they are directly payable by the consumer and imposed directly by the creditor as a condition of the extension of credit, which would be funds advanced to cover the consumer's overdraft.

Open-End (Not Home-Secured) Credit Plan

Having determined that fees for overdraft services and other types of credit products in connection with prepaid accounts can be finance charges, the Bureau then examined the question of whether the programs themselves are open-end (not home-secured) credit plans. As discussed below, the Bureau believes that overdraft lines of credit, overdraft services, and similar products that could be offered in connection with prepaid accounts can be regulated by Regulation Z as ''open-end credit'' where a financial institution routinely extends credit to cover transactions for which there are insufficient funds in the account (even if the institution retains, by contract, the discretion not to pay the transactions) and obligates the consumer contractually to repay the debt, and may impose finance charges from time to time on an outstanding unpaid balance. The Bureau recognizes (as noted above) that a line of credit where there is a written agreement to pay overdrafts and impose finance charges is already covered by Regulation Z as ''open-end credit,'' whether it is associated with a prepaid or checking account; pursuant to this proposal and as discussed further below, overdraft services for prepaid accounts would now be treated similarly to such lines of credit, with certain proposed modifications.

TILA section 103(j) defines an open-end credit plan as ''a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance.'' 15 U.S.C. 1602(j). Regulation Z defines ''open-end credit'' to mean consumer credit extended by a creditor under a plan in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a ''finance charge'' from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. Regulation Z explains that for there to be an open-end credit plan, there must first be a plan. Comment 2(a)(20)–2 explains that a plan

[331] The term ''creditor'' also includes a card issuer, which is a person that issues credit cards, when that person extends credit accessed by the credit card. *See* § 1026.2(a)(17)(iii) and (iv). Regulation Z defines the term ''credit card'' to mean any card, plate, or other single credit device that may be used from time to time to obtain credit. *See* § 1026.2(a)(15). A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. *See* § 1026.2(a)(15)(iii). In addition to being creditors under TILA and Regulation Z, card issuers also generally must comply with the credit card rules in the FCBA and in the Credit CARD Act (if the card accesses an open-end credit plan), as implemented in Regulation Z subparts B and G. *See generally* §§ 1026.5(b)(2)(ii), 1026.7(b)(11), 1026.12 and 1026.51 through .1026.60.

[332] *See also* OCC 2001 Guidance; Joint Guidance (noting that overdraft satisfies the definition of ''credit'' in TILA).

connotes a contractual arrangement between the creditor and the consumer. For a plan to be an open-end credit plan, it must then satisfy the three requirements noted above. *See* § 1026.2(a)(20).

The Bureau understands that financial institutions offering automated overdraft services include in their account agreements details about how the overdraft service will operate and information about overdraft fees. These terms and conditions documents explain that consumers using overdraft programs must agree to repay the debt created by an overdraft and the related fee, indicating that a contractual arrangement between the creditor and the consumer exists. Although these agreements typically note that the financial institution retains discretion to authorize or decline any particular overdraft, as a practical matter financial institutions operating automated overdraft programs exercise limited if any discretion in authorizing particular transactions so long as the overdraft transaction is within the overdraft limit that the institution previously established.[333] The Bureau understands that financial institutions have historically argued (in connection with deposit account overdraft services) that an overdraft service is not an open-end credit plan subject to TILA because, in the account agreement, they typically reserve discretion not to pay overdrafts.[334] In practice, the Bureau believes that this discretion is typically limited; automated overdraft systems for prepaid accounts are typically programmed to approve all would-be overdrafts that are within a predetermined credit limit. Furthermore, the Bureau believes that the contractual reservation of discretion is no different from credit card issuers' standard practice of reserving discretion to decline a credit card transaction without prior notice, notwithstanding that the transaction is within the credit limit.[335] Thus, the Bureau believes that simply labeling an overdraft service as discretionary is insufficient to negate the existence of a credit plan.

The FDIC reached a similar conclusion in its guidance on automated overdraft payment programs, noting a distinction between ad hoc overdraft services, which typically involve irregular and infrequent occasions on which a bank employee exercises discretion in a specific instance about whether to pay an item (so a customer can avoid an NSF fee that the payee may impose), and ''risks posed by automated overdraft payment programs.'' According to the FDIC guidance, such programs ''are established programs [that] are often partially or fully computerized, that are used by institutions to determine whether [NSF] transactions qualify for overdraft coverage based on pre-determined criteria.''[336] The Bureau believes the latter formulation is how established prepaid overdraft services function and thus that a plan exists in these cases.

Having determined that a plan exists, the Bureau evaluated whether such a plan satisfies the three prongs necessary to establish the plan as an open-end (not home-secured) credit plan. The first prong asks whether overdraft services, including those offered in connection with prepaid accounts, can be plans under which the creditor reasonably contemplates repeated transactions. Particularly to the extent that prepaid and deposit account overdraft services are automated, the Bureau believes that overdraft programs typically contemplate and approve repeated transactions.[337] Indeed, every prepaid overdraft service that charges a fee of which the Bureau is aware contemplates and approves repeated transactions.

The Bureau then examined the second prong of the definition of ''open-end credit'' to determine whether the creditor may impose a finance charge from time to time on an outstanding unpaid balance. *See* § 1026.2(a)(20)(ii). As noted above, the Bureau believes that overdraft service fees and charges on other credit features easily meet the general definition of finance charge. With regard to the element focusing on whether a finance charge may be computed and imposed from time to time on an outstanding balance, the Official Interpretations to Regulation Z explain that this provision simply means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated in advance of the usage of the plan. *See* comment 2(a)(20)–4 (explaining that the requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated and that a plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance). For a credit plan where credit is replenishing, an amount financed cannot be calculated for the plan. Such credit plans will meet this element if a finance charge may be imposed on the plan. Indeed, a plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor reserves the right, under the plan, to impose a finance charge from time to time on an outstanding balance. *See* comment 2(a)(20)–4.

The Bureau does not anticipate that there will be a specific amount financed for a prepaid overdraft service at the time it is established; instead, credit extensions may be added from time to time to the outstanding balance for the plan, and fees or other finance charges may be imposed from time to time in connection with the usage of the plan, thus satisfying this criterion. To the extent that such a plan involves finance charges but no periodic rate, it may be a charge card, which is specifically subject to coverage under Regulation Z. *See, e.g.*, 1026.2(a)(15)(iii) (defining a ''charge card'' as ''a credit card on an account for which no periodic rate is used to compute a finance charge'').

Lastly, the Bureau anticipates that automated overdraft services for prepaid accounts generally will be structured such that the credit line for the plan will generally replenish to the extent that any outstanding balance is repaid, thus satisfying the final prong of the definition of open-end credit, that the amount of credit that may be extended is generally made available to the extent that any outstanding balance is repaid. Comment 2(a)(20)–5 currently provides that this criterion means that the total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. This unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment, but it does not mean that the creditor must establish a specific credit limit for the line of credit or that the credit plan must always be replenished to its original amount. The creditor may

[333] As noted above, the nature of such an arrangement also establishes an arrangement between the institution and the consumer to pay certain overdrafts.

[334] Several commenters to the Prepaid ANPR also made this point.

[335] Bureau staff reviewed many agreements in the Bureau's database. *See generally http://www.consumerfinance.gov/credit-cards/agreements/*.

[336] FDIC Overdraft Payment Supervisory Guidance at 3.

[337] As is discussed below, the Bureau intends to exclude overdrafts for which no finance charge as defined in § 1026.4 and no fee described in § 1026.4(c) is charged and repayment is not expected by written agreement in more than four installments.

reduce a credit limit or refuse to extend new credit in a particular case due to changes in the creditor's financial condition or the consumer's creditworthiness, if permitted by Regulation Z; indeed, the Bureau believes that this is a quite common practice with respect to credit cards. While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any preset credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion. The Bureau believes that overdraft services linked to prepaid accounts generally are and will be structured to meet this criterion. Insofar as the Bureau has determined that the three prongs of an open-end credit plan are met, it finds that an overdraft service on a prepaid account is an open-end credit plan much like an overdraft line of credit or other similar products linked to prepaid accounts.

Overdraft Services and Other Credit Features on Prepaid Accounts and TILA's Definition of a Credit Card

Having determined that overdraft services, overdraft lines of credit, or other similar products linked to prepaid accounts can be open-end (not home-secured) credit plans, the Bureau evaluated whether such arrangements involve use of a ''credit card'' under Regulation Z. TILA section 103(k) defines the term credit card to mean any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. 15 U.S.C. 1602(l). In turn, § 1026.2(a)(15)(i) defines credit card to mean any card, plate, or other single credit device that may be used from time to time to obtain credit.

The Bureau believes that prepaid accounts that access overdraft services, overdraft lines of credit, or similar products generally meet the definition of ''credit card'' and, absent an exemption, generally would be subject to the rules in Regulation Z applicable to credit cards. As is noted above in the discussion of Regulation E proposed 1005.2(a)(3), the definition of prepaid account includes certain access devices that may not be a physical card. Specifically, the term prepaid account would include cards, codes, or other devices capable of being loaded with funds and usable at a wide variety of unaffiliated merchants or for person-to-person transfers. *See* proposed Regulation E 1005.2(b)(3). Thus, the proposed Regulation E definition would include physical cards—such as a GPR card—but also would include access devices that are solely online or on a mobile phone. With respect to Regulation Z, the Bureau similarly intends for ''card, code, or other device'' to apply to the panoply of different access devices in addition to physical cards on which credit may be extended including ''hybrid'' cards that may function as both a prepaid account and a credit card.

The Bureau proposes not to extend the exclusions for debit cards and account numbers to prepaid accounts. The commentary to the definition of ''credit card'' explains that a debit card is not a credit card unless there is a credit feature or agreement to extend credit, even if the creditor occasionally honors an inadvertent overdraft. The Board adopted this commentary to exclude bounce protection plans from becoming subject to Regulation Z when they are accessed by a debit card, consistent with the exclusion for overdraft charges from the definition of finance charge where there is no written agreement to extend credit and charge a fee, as described above.[338] With regard to overdraft lines of credit and other open-end (not home-secured) plans where there is an agreement to extend credit, a debit card that can access the credit is a credit card and is subject to the credit card provisions in Regulation Z subpart B that implement the FCBA, such as the no-offset provision. However, the Board used its TILA exception authority to exempt debit cards that access open-end overdraft lines of credit from the Credit CARD Act provisions, generally set forth in subpart G, because it determined that the protections in Regulation E generally apply to debit cards that access an overdraft line of credit. In addition, the Board noted that overdraft lines of credit were not, at that time, in wide use and that creditors issuing such lines of credit generally did not engage in the practices addressed by the Credit CARD Act.[339]

The existing commentary to the definition of ''credit card'' also excludes an account number (where there is no physical device) from the definition of credit card, unless the account number can access an open-end line of credit to purchase goods or services. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of Regulation Z. However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the internet), the account number is a credit card for purposes of Regulation Z. Relatedly, the commentary explains that a ''hybrid'' card—a card that accesses both a credit and an asset account (that is, a debit-credit card)—is considered a credit card. *See* comment 2(a)(15)–2.i.B. Thus, there is a scenario in existing Regulation Z when the same number (the number of the debit-credit card) can access both the credit and the asset account.

Rather than expanding this existing patchwork approach, the Bureau is proposing to treat all credit offered on or in connection with a particular prepaid account in the same way (to the extent that the credit plan imposes a finance charge or a fee described in § 1026.4(c) and is not payable in more than four installments)—subject to the specific credit card protections in subparts B and G. As is noted above, in addition to overdraft services, prepaid accounts may also be offered with other types of credit features such as linked lines of credit. Although a line of credit accessed by an account number that pushes credit into a checking account would not be considered a credit card under Regulation Z if the account number cannot be used to access an open-end line of credit to purchase goods or services, the Bureau believes it is appropriate to treat all lines of credit linked to prepaid accounts as credit cards when they are linked to a prepaid account.

Relatedly, the Bureau also believes it appropriate to include as credit cards products involving a range of access devices. For example, the Bureau intends its proposal to apply if the provider offers a credit product in which the consumer has an account number that can access the line of credit, and the credit can be deposited directly only into the prepaid account (even if there was no physical device to access the line of credit).

The Bureau believes that this is appropriate because of the increased protections offered by the credit card rules, discussed below, and the unique nature of prepaid accounts. While the existence of linked lines of credit and ''push'' credit products associated with prepaid accounts today may be limited, the Bureau is concerned that were such products not covered by the proposed provisions governing credit, they would be offered as a means of evading the requirements articulated in this proposal. Thus, as is discussed in more

[338] 46 FR 50288, 50293 (Oct. 9, 1981).

[339] *See* 75 FR 7657, 7664 (Feb. 22, 2010); *see also* § 1026.2(a)(15)(ii).

detail below, the Bureau's proposal also would cover such credit plans.

Specifically, the proposal would generally provide that prepaid accounts are credit cards under Regulation Z, except where a prepaid account can only access credit that is not subject to any finance charge or fee described in § 1026.4(c) (such as an application fee to apply for credit, late payment fee, over the credit limit fee or returned payment fee) and repayment is not expected by written agreement in more than four installments. To the extent no periodic rate is imposed, such as if an overdraft service charges a flat per transaction fee, then the credit product linked to a prepaid account would be a charge card. *See* § 1026.2(a)(15)(iii).

The Bureau believes that the proposal would provide consumers with stronger and more consistent protections than would apply if the Bureau extended exemptions for overdraft services on prepaid accounts that would exempt them entirely from Regulation Z but did not subject lines of credit and products that push credit onto the prepaid account as credit cards. Thus, under the proposal, prepaid accounts generally would be credit cards when they access a credit feature, and generally would be subject to the rules in Regulation Z applicable to credit cards. The proposal also would add additional, unique protections to Regulation Z for prepaid accounts that are credit cards that access overdraft services or credit features.

Where applicable, the extension of credit card provisions to prepaid accounts would mean that a variety of Regulation Z provisions would apply, such as enhanced protections for credit cardholders pursuant to the FCBA and the Credit CARD Act. Those requirements, in tandem with the proposed application of TILA's no-offset provision (TILA section 169) to prepaid accounts subject to these credit card provisions, and corresponding proposed changes to the compulsory use provision in Regulation E § 1005.10(e)(1), would allow consumers to retain control over the funds in their prepaid accounts if a credit card feature becomes associated with those accounts because they will be able to control when and how debts are repaid. *See* § 1026.12(d).[340]

Specifically, proposing to apply TILA's timing and due date requirements for periodic statements and the no-offset provision and proposing to amend Regulation E's compulsory use provision would, respectively, mean that card issuers would have several restrictions. First, they would be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle. Second, card issuers could only move funds automatically from an asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date, and only pursuant to the consumer's signed, written agreement that the issuer may do so. Third, card issuers must offer consumers a means to repay their outstanding credit balances other than automatic repayment (such as by means of a transfer of funds from the prepaid asset account to the credit account that the consumer affirmatively initiates on the prepaid account's online banking Web site).

In addition, the Bureau proposes that by virtue of treating credit features offered on prepaid accounts as open-end credit accessed by a credit card, other protections of the Credit CARD Act, mostly implemented in subpart G of Regulation Z, would also apply.[341] Among other things, these requirements would require such credit card issuers to perform underwriting when opening a credit card account for consumers in accordance with the Credit CARD Act's ability-to-pay requirements. *See* § 1026.51(a). Such issuers would also generally be required to limit fees (as opposed to periodic interest rates) to 25 percent of the credit limit during the first year after the consumer opens the credit card account (*i.e.,* the credit account linked to the consumer's prepaid account could be opened no earlier than thirty calendar days after the consumer registered the prepaid account). *See* section-by-section analysis of § 1026.52(a). This limit would apply to any per-transaction fees—such as the prototypical ''overdraft fee''—that issuers might assess each time they authorize a prepaid transaction that accesses the credit account.

Consideration of Extension of Existing Exemptions for Overdraft Services on Prepaid Accounts

In this rulemaking, the Bureau considered the alternative of preserving the existing bifurcation in regulatory treatment between overdraft services for traditional deposit accounts and other forms of credit that may be associated with such accounts, but extending traditional deposit account treatment to prepaid accounts. The Bureau believes instead that invoking TILA and Regulation Z protections prepaid consumers that may use prepaid account overdraft services and other credit features is appropriate for several reasons.

First, the Bureau believes that covering overdraft services offered in connection with prepaid accounts under Regulation Z aligns with TILA's purpose (TILA section 102(a))—to ''assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.'' 15 U.S.C. 1601(a). In addition and as discussed above, the provisions of the FCBA and the Credit CARD Act would offer additional protections to consumers who use overdraft services and other forms of credit offered in connection with prepaid accounts. In addition to the application of the FCBA and Credit CARD Act credit card provisions to overdraft services accessed by prepaid accounts that would be considered credit cards under the proposal, the Bureau believes that regulation of prepaid account overdraft services as open-end (not home-secured) credit would serve to accomplish the stated purpose of TILA by requiring creditors and other persons to explain the terms of overdraft services to consumers in the context of Regulation Z, protect consumers from high fees during the first year (through Regulation Z's fee harvester provision) and from harms arising from various billing and improper credit card practices, and give consumers strong tools to manage their credit relationships.

Second, the Bureau believes the Board's justification of the existing regulatory approach is much less convincing as applied to prepaid accounts, both because the historical justification for checking account overdraft services does not apply to

[340] This provision implements TILA section 169, which Congress added to TILA when it enacted the FCBA. The provision prohibits card issuers from taking any action to offset a cardholder's indebtedness arising from a consumer credit card transaction against the cardholder's funds held with the issuer, unless such action was previously authorized in writing by the cardholder in accordance with a plan whereby the cardholder agrees to permit the issuer periodically to deduct the debt from the cardholder's deposit account.

[341] As noted above, under the proposal, a prepaid account would not be a credit card if it only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in § 1026.4(c) and repayment is not expected in more than four installments and thus the provisions discussed herein would not apply.

prepaid accounts and because there are notable differences between how prepaid accounts and checking accounts function. In constructing the exemption, the Board relied in part on the fact that at that time overdraft in the checking account context was determined to be a ''courtesy'' that enabled consumers to avoid both the embarrassment of bouncing checks and the attendant costs. The Board also relied on the fact that, at the time, overdraft decisions were made on an ad hoc basis; that is no longer true of automated overdraft programs. At the time the Board established the Regulation Z exemption, bounce-protection programs (as overdraft services were known) were necessarily check-based because checks and cash were—at that time—consumers' only ways of accessing funds in their deposit accounts. Further, a financial institution's decision whether to pay a given check that triggered an overdraft was at that time necessarily manual, or ad-hoc, because computers (and automated credit decision-making) were only in their infancy. Typically, a consumer's institution (the ''paying bank,'' which is equivalent to the card-issuing bank in a card transaction) cannot authorize or decline a purchase by check when the consumer seeks to make payment (*i.e.*, while at the merchant). As the Board noted in 2009, institutions that historically provided overdraft coverage for check transactions on an ad-hoc basis often provided a benefit to consumers, insofar as paying the check was often a preferable outcome to a bounced, returned check or NSF fee; additional fees imposed by merchants; and even potential criminal liability for passing bad checks.[342]

However, the account structure and logistics for prepaid accounts have never matched those for checking accounts that existed in 1969, because overdraft services in the prepaid account context are not structured by institutions or considered by consumers to be an occasional courtesy to avoid a bounced check. Checking accounts, by definition, allow consumers to write checks and present them to payees without first receiving authorization from their financial institution. Checking accounts also allow incoming debit ACH transactions without preauthorization. These types of transactions are relevant because the exact timing of the check clearance and incoming ACH process can be difficult for the consumer to predict. For instance because sometimes it may take several days or longer for a check to be presented and funds to be withdrawn from the consumer's account, while other times checks may be presented faster. Uncertainty around the timing of check and ACH presentment and the substantial negative consequences of rejected transactions may lead to overdrafts for traditional accounts, but are extremely unlikely for prepaid accounts.

Indeed, by contrast, virtually all prepaid account transactions are preauthorized, which means that the merchant seeks authorization from the financial institution before providing goods or services to the consumer.[343] In such cases, the consumer is not at risk of having a payment rejected after a transaction has already occurred and the consumer will not be subjected to NSF and merchant fees; rather, the financial institution can simply reject the transaction before the purchase occurs if there are insufficient funds in the account.[344] This is true for point-of-sale transactions as well as online bill pay transactions completed via ACH initiated from the prepaid account to the biller (or even with mailed, pre-debited checks). Thus, a consumer using a prepaid account is less like the checking account customer that the Board focused on in creating the exemption for overdraft—a consumer being extended a courtesy in order to avoid potentially harsher repercussions—and instead is like any other consumer using credit to purchase goods or services. To the extent offered, financial institutions' ongoing and routine decisions to pay prepaid account transactions that will result in the creation of a debt and the deferment of payment on that debt function as if they are an extension of credit and constitute a credit plan (unless exempted from Regulation Z). Insofar as this is how most prepaid cards work, they have been distinguishable from traditional checking accounts.

Third, the Bureau believes that treating prepaid overdraft services as open-end credit plans acting as credit cards would provide stronger protections that are more closely calibrated to how the industry has broadly marketed prepaid products to consumers and how consumers, in turn, expect to be able to use the products. As noted above, financial institutions deliberately market prepaid accounts to consumers as products that are safer and easier to use than comparable products with credit features, in particular checking accounts with overdraft. Specifically, many companies market prepaid accounts to consumers as products that increase consumers' financial control by preventing overspending and the incurring of debt.[345] By control, the Bureau believes that these companies mean that prepaid account users can exert control by limiting expenditures to the funds loaded onto the prepaid account and cannot spend funds they do not have. Financial institutions often market prepaid cards as requiring no credit checks, not reporting to credit bureaus unpaid debts (of which there are rarely any), and not including any credit features. Underscoring this marketing approach, many industry commenters to the Bureau's ANPR repeatedly emphasized these unique features of prepaid products as a primary reason behind their growth in popularity.

Many consumers have chosen prepaid cards specifically because the cards offer greater spending control in general and do not typically offer overdraft services of the same type as commonly found on checking accounts in particular. Thus, the prepaid industry has attracted a large number of both voluntary and involuntary former checking account customers who had their checking account closed. Many prepaid consumers previously had a checking account and either lost that

[342] 77 FR 59033, 59033 (Nov. 17, 2009); *see also generally* FDIC Overdraft Payment Supervisory Guidance.

[343] An exception is third-party ACH debits, which could be sent without prior authorization. However, an informal review by the Bureau of major GPR card programs indicates that most will not accept incoming ACH debits or that, by contract, cardholders are not permitted to establish them. The Bureau notes that, as currently structured, most prepaid products do not allow consumers to write checks that are not preauthorized.

[344] The Bureau is aware that, in some instances, a transaction will be authorized when the account balance is positive but will ultimately settle when the account balance is negative, because for some types of transactions the final settlement amount may be higher than the authorization amount (*e.g.,* at restaurants because tips are sometimes added after authorization). However, the Bureau believes that such occurrences are rare and generally only for marginal amounts rather than full transactions.

[345] *See, e.g.,* NBCPA, *What are Prepaid Cards?, http://www.nbpca.com/en/What-Are-Prepaid-Cards/Prepaid-Card-Benefits.aspx* (last visited Oct. 28, 2014) (''For many Americans, prepaid cards serve as a tool with which to more effectively budget their spending. With a prepaid card, consumers avoid the risk of over-spending or overdraft, thus avoiding the interest, fees and potential negative credit score implications of traditional credit cards. And for parents, prepaid cards provide tools to maintain control over their teens' or college students' spending.''); *see also* Examining Issues in the Prepaid Card Market: Hearing before the Subcomm. On Fin. Inst. and Consumer Prot., S. Comm. on Banking, Housing and Urban Affairs, 112th Cong. 2 (2012) (Remarks of Dan Henry, Chief Executive Officer, NetSpend Holdings, Inc.) (''Our customers are typically working Americans who want control . . .'').

account or gave up that account due to failure to repay debts or related issues.[346] The Bureau believes that many of these consumers lost their checking accounts because they could not handle repeated overdraft fees. Those who left voluntarily may also have done so due to their difficulty in managing to avoid overdraft fees. Relatedly, the Bureau also believes that many of these consumers, and even many consumers who continue to maintain separate checking accounts, chose to purchase prepaid products because of their promise to allow consumers to control their spending. Indeed, many participants in the Bureau's consumer testing emphasized control as a primary reason they used prepaid cards.[347] Participants explained that did not want a product with overdraft services because they were afraid they would be tempted to use such a service and incur debt and fees beyond what they could control. As noted above, other studies have similarly found that a primary reason consumers use prepaid cards is that they want increased control over their finances and want to avoid incurring debt and related fees.[348]

Thus, to prevent erosion of what the Bureau believes is a clear distinction regarding overdraft services in the current market and in the minds of consumers between prepaid accounts and checking accounts that offer overdraft services, and to ensure that credit products that are associated with prepaid accounts receive consistent treatment regardless of their particular structures, the Bureau is proposing to adopt stronger protections that would treat various credit features associated with prepaid accounts as an open-end credit card product subject to Regulation Z. By doing so, the Bureau believes that consumers will more clearly know and understand when they are accessing credit using a prepaid account and also will benefit from increased protections not available for checking accounts. The Bureau is also concerned that were the Bureau to permit overdraft services without the proposed protections, the approach of marketing prepaid accounts as a safe alternative to checking accounts could be confusing to consumers. To the extent that the issuer of a prepaid account wants to veer from current norms by offering overdraft services or other credit features, the Bureau believes that requiring appropriate markers and full protections for credit card products, including the Bureau's proposed overdraft disclosure requirements in proposed § 1005.18(b) will help consumers recognize that they are taking this extra, and for prepaid products, perhaps unusual step of accessing credit and to treat that credit with appropriate caution. This is in contrast to the historical treatment of checking accounts, where overdraft services have been common across almost all such accounts and consumers expect such services to be offered in connection with checking accounts.

By labeling overdraft services offered on prepaid products as credit subject to the disclosure requirements of Regulation Z, the Bureau believes that the resulting product will be better understood and managed as credit by consumers to the extent that some prepaid accountholders decide they want to access such credit. In addition, by not permitting financial institutions to accept applications for an overdraft service until 30 calendar days after registration of the prepaid account, *see* proposed § 1005.18(g)(1) and § 1026.12(h)(1), the Bureau believes it will prevent consumers from being pressured to make a decision on overdraft or credit when acquiring the prepaid account, such as when they buy a GPR card in a retail store. It would also allow consumers time to decide whether the basic prepaid card is a good fit for them before deciding whether to layer on a credit relationship that may be more difficult to walk away from.

Fourth, there is evidence that a significant portion of consumers with prepaid accounts would particularly benefit from the stronger protections that Regulation Z provides. More clearly defined credit features will be beneficial in part because of the marketing dynamics discussed above and because some consumers have experienced difficult managing overdraft services on traditional checking accounts.[349] In general, prepaid consumers are disproportionately unbanked or underbanked,[350] often have limited education, and are often unemployed or recipients of public benefits.[351] Although the size of this group is not clear, the Bureau believes that some users of prepaid products do vary, in some degree, from users of traditional deposit accounts. Thus, the Bureau believes that they may be seeking or expecting different features from that of a traditional checking account when they use prepaid cards. Moreover, because the costs to buy prepaid accounts are lower than for checking accounts—they are often easily bought in retail stores for a small sum—the Bureau believes that it is likely that this product may continue to attract consumers who are relatively new to the financial system over time.[352]

[346] 2014 Pew Survey, at 7–8 (Noting both that ''Most prepaid card users who have had a checking account in the past have paid associated overdraft fees for debit card usage'' and that ''Among those prepaid card users who have ever had a bank account, 41 percent of them say they have closed or lost a checking account because of overdraft or bounced check fees.'').

[347] *See* ICF Report at 5.

[348] *See* Bretton Woods, Inc., *A Comparative Cost Analysis of Prepaid Cards, Basic Checking Accounts and Check Cashing,* at 4 (February 2012), *available at http://bretton-woods.com/media/3e145204f3688479ffff832affffd524.pdf* (noting that 74 percent of prepaid users like the fact they cannot overspend or overdraft the most about prepaid cards); *2014* Pew Survey, at 14 ex.12 (noting that the top two reasons consumers claim to use prepaid cards related to avoiding credit card debt (67 percent) and helping them not spend more money than they actually have (66 percent)).

[349] 2014 Pew Survey, at 7–8 (noting both that ''Most prepaid card users who have had a checking account in the past have paid associated overdraft fees for debit card usage'' and that ''Among those prepaid card users who have ever had a bank account, 41 percent of them say they have closed or lost a checking account because of overdraft or bounced check fees.''). Separately, one large program manager estimates that 80 percent of its GPR card customers earn less than $50,000. *See* Kate Fitzgerald, *Green Dot Chief Sees Prepaid Mobile Payments As Company's Next Challenge* (May 7, 2012) *http://www.isoandagent.com/news/Green-Dot-Chief-Sees-Prepaid-Mobile-Payments-As-Companys-Next-Challenge-3010590-1.html* (explaining that ''single mothers in their late 30s and early 40s comprise 55 percent of [one major prepaid card company's] target market, with most of them earning less than $50,000 annually.''), while one study found that 84 percent of GPR card users had incomes below the nationwide median. Similarly, others have informed Bureau staff that the average credit score of prepaid account users is far below average.

[350] In its report on unbanked and underbanked consumers, the FDIC explained that households are identified as ''unbanked'' if they answered ''no'' to the question, ''Do you or does anyone in your household currently have a checking or savings account?.'' The FDIC further explained that ''underbanked households are defined as those households that have a checking and/or a savings account and had used non-bank money orders, non-bank check cashing services, non-bank remittances, payday loans, rent-to-own services, pawn shops, or refund anticipation loans (RALs) in the past 12 months.'' *See* FDIC, *2011 FDIC National Survey of Unbanked and Underbanked Households* (2011) *available at https://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf.* For discussion of prepaid consumers' background, *see* Kansas City Fed Study, at 12–13 (although the report also notes no correlation due to income or education; possibly due to the different types of use by prepaid consumers); *available at https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14-01.pdf.*

[351] 2011 FDIC Survey, at 16, 18, 40; *see also* Nat'l Council of La Raza, Perspectives on Prepaid Cards from Low-Income Hispanic Tax Filers at 1–2 (2011) *available at http://www.nclr.org/images/uploads/publications/perspectives_on_prepaid_cards_(3).pdf.*

[352] Relatedly, Congress has similarly sought to address such services on prepaid accounts. EFTA section 920(a), as implemented in Regulation II, limits interchange fees when an overdraft fee may be charged on the prepaid card (by, as noted above, carving cards that may impose overdraft fees out of

Continued

To the extent some consumers may want to take advantage of credit features if offered in connection with their prepaid account, the Bureau further believes that its proposed approach would provide these consumers with stronger tools and protections that would appropriately limit their credit exposure and reduce the risk of some of the harms that may be associated with using prepaid accounts for which an overdraft service is offered.

Fifth, unlike with respect to checking accounts where overdraft services have been structured to fit a unique and separate regulatory regime for several decades, the Bureau is proposing to regulate prepaid credit features on a largely blank slate. As noted above, deposit accounts and their pricing structures have evolved under compliance frameworks that were developed in accordance with existing regulations, exceptions to those regulations, and other agencies' guidance. The deposit account industry would view any departure as significantly disruptive. In contrast, very few prepaid products offer overdraft services or other credit features. Most prepaid account programs do not have such a feature and, as a result, providers would have to implement a new compliance regime in any event were they to decide to add such features.

Similarly, while many have settled expectations that if they write a check or authorize a bill payment through a third party for which there is insufficient funds; the transactions will be paid rather than bounced, the Bureau does not believe that prepaid accountholders expect similar treatment because it is so rare for check and bill payment services to be offered absent pre-authorization. Implementation costs for industry and the risk of disruption to expectations for all stakeholders is thus much different in the context of prepaid accounts. Indeed, by proposing to act now on prepaid accounts before credit features become widespread, the Bureau expects that credit features on prepaid accounts will evolve in a more straightforward and consumer-friendly manner consistent with the general framework and protections for credit.

Proposal's Treatment of Overdraft Services is Limited to Prepaid Accounts

The Bureau is proposing to make adjustments to Regulation Z and Regulation E that would not extend existing exemptions for overdraft services on traditional deposit accounts to overdraft services on prepaid accounts, but it is not proposing to alter existing provisions that apply to deposit account overdraft, including exemptions for overdraft services from Regulation Z and Regulation E's compulsory use provision. As described above, the Bureau sees significant differences in the underlying accounts and transaction types, the history of marketing and market segmentation, and the transaction costs and other disruptions that would be involved in shifting to a different regulatory framework with respect to checking accounts. Indeed, the Bureau is acting at this time to subject prepaid accounts to Regulation Z and the compulsory use provisions of Regulation E in part because there is no clearly established and predominant regulatory or compliance regime applicable to such programs, such that adopting the Bureau's proposal would not create significant upheaval in the market.

The Bureau recognizes that historical, operational and other factors have supported a different regulatory approach with respect to overdraft in the checking account context than with respect to prepaid accounts. The Bureau continues to study deposit account overdraft services and will propose any further enhancements to the existing regulatory framework that it deems appropriate as part of that separate endeavor in accordance with its rulemaking procedures.[353]

Other Implications of the Bureau's Approach to Prepaid Credit Products

The detailed discussion below sets forth the Bureau's proposed changes to Subparts A, B, and G of Regulation Z to effectuate the approach to overdraft services and credit features offered in connection with prepaid accounts. The Bureau seeks comment both on its general approach to such credit products and to the specific changes proposed. In addition, the Bureau seeks comment on certain potential implications of its approach, as described immediately below:

Military Lending Act. As discussed above, the Department of Defense (the Department) recently proposed to expand the scope of the coverage of its regulation (32 CFR part 232) that implements the MLA to include a broad range of open-end and closed-end credit products, including open-end (not home secured) credit card accounts that are subject to Regulation Z.[354] Under the MLA, a creditor generally may not apply a military annual percentage rate (MAPR) greater than 36 percent in connection with an extension of consumer credit to a military service member or dependent. For covered credit card accounts, any credit-related charge that is a finance charge under Regulation Z (as well as certain other charges) would be included in calculating the MAPR for a particular billing cycle and the MAPR for that billing cycle could not exceed 36 percent.[355] However, the Department's proposal provides that a credit card issuer does not have to include in the calculation of the MAPR any charge that is a ''bona fide fee'' if the fee is ''reasonable and customary.'' [356] The Department has proposed a safe harbor that would determine whether fee levels are reasonable and customary based on the average amounts charged by large credit card issuers for substantially similar fees during the last three years.[357]

Thus, as with fees for other types of consumer credit extended to military service members, fees levied for credit features (including overdraft services) on prepaid accounts held by military service members or their dependents would, as a result of the Department and Bureau proposals in combination (if both proposals are finalized as proposed), generally be included in calculating the MAPR for a billing cycle unless excluded under the bona fide fee exception. The Bureau requests comment on the consequences, if any, from the combined effect of the two proposals (were they to be finalized) with respect to overdraft services and credit features on prepaid accounts held by military service members.

the exception from the rule's fee caps). While not prohibiting such services outright, the Bureau believes that Congress, in differentiating treatment, acted out of concern regarding overdraft services on prepaid accounts (vis-à-vis prepaid cards that cannot impose overdraft fees).

[353] *See* CFPB's Unified Agenda for Spring 2014, *available at http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3170&Image58.x=58&Image58.y=5&Image58=Submit.*

[354] 79 FR 58602 (Sept. 29, 2014).

[355] 79 FR 58602 at 58619.

[356] 79 FR 58602 at 58638. *See* proposed 32 CFR 232.4(d) of the Department's proposal, stating that the exclusion the proposal provides for a bona fide fee applies only to the extent that the charge by the creditor is a bona fide fee and is reasonable and customary for that type of fee. The exclusion for bona fide fees does not apply to periodic rates. It also does not apply to any credit insurance premium, including charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements, or to any fees for credit related ancillary products sold in connection with and either at or before consummation of the credit transaction or upon account opening, because those charges are expressly included in the definition of ''interest'' in the applicable statute (10 U.S.C. 987(i)(3)) and therefore must be included in the MAPR calculation.

[357] 79 FR 58602 at 58638. *See* proposed 32 CFR 232.4(d) of the Department's proposal.

Multipurpose Cards and Card Network Rules. The Bureau's approach to credit features in connection with prepaid products would result in a single plastic card or other access device functioning either as a prepaid card or as a credit card, depending on the balance in the asset account that the card accesses at the time of a transaction that the consumer makes. For example, if the asset account balance is sufficient to fund the transaction, the card could function as a prepaid card; if not, the card could function as a credit card. The Bureau has proposed a number of provisions and sought comment as detailed elsewhere to promote consumer understanding, facilitate clear application of the various potentially applicable regulatory regimes, and address other challenges that may arise due to the multipurpose nature of the card product. For example, the Bureau is proposing to amend the provision in Regulation Z (§ 1026.13(i)) that addresses the relationship between the Regulation E and Z error resolution regimes to clarify the applicability of those regimes to an extension of credit incident to an electronic fund transfer when the consumer's prepaid account is overdrawn. *See* § 1026.13(i) in the section-by-section analysis below. The Bureau is also seeking comment on (but not proposing) the possibility of requiring additional real-time notifications of transactions triggering an overdraft or the accessing of a linked credit feature, or requiring real-time opt-in by consumers in order to approve each overdraft or other credit transaction. *See* § 1005.18(c) in the Regulation E section-by-section analysis above.

The Bureau seeks comment on these specific amendments and whether further amendments or guidance would be appropriate. For instance, while there is regulatory precedent for similar multipurpose debit/credit card products, these cards do not appear to be in wide use today. *See, e.g.,* comment § 1026.12(a)(1)–7 (stating that a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request).[358] The Bureau also seeks comment on consumer and industry experiences with similar multipurpose products historically, and whether they may yield useful lessons for further refining the Bureau's proposal with regard to prepaid cards.

Finally, the Bureau notes that card network rules may treat a card differently depending on whether it accesses an asset account or a credit account. The Bureau's proposal could result in an increase in the number of cards that can access both an asset account and a credit account, and the Bureau requests comment on any card network rule issues that might arise from its proposal to treat most credit plans accessed by prepaid cards, for which finance charges are imposed, as open-end credit accessed by a credit card under Regulation Z.

Subpart A

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

Overview of Proposed Changes to Definitions

As discussed above in the Overview of Regulation Z Proposal section and below in the section-by-section analysis of § 1026.4, the Bureau proposes several amendments to the definition of ''finance charge,'' and commentary for the definitions of ''open-end plan'' and ''credit card.'' As a result of these proposed changes, a person that offers credit plans accessed by prepaid cards, such as overdraft services, or certain other credit plans linked to prepaid accounts that are accessed by account numbers, where the person charges a finance charge for the credit, generally would be extending ''open-end credit'' that is accessed by a ''credit card'' and thus would be covered by Regulation Z's open-end (not home-secured) rules and credit card rules in subparts B and G.[359] (The term ''prepaid card'' is defined in the proposal to mean any card, code, or other device that can be used to access a prepaid account as defined under Regulation E, *see* proposed § 1026.2(a)(15)(v) and (vi).) The open-end (not-home secured) rules in subpart B include account-opening disclosures, periodic statement disclosures, change-in-terms notices, provisions on promptly crediting payments, and billing error resolution procedures. The credit card rules in subpart B include provisions that restrict the unsolicited issuance of credit cards, limit the liability for unauthorized use of credit cards, and prohibit the offset of the credit card debt against funds held in asset accounts by the card issuer. The credit card rules in subpart G include provisions that prohibit credit card issuers from extending credit without assessing the consumer's ability to pay and restrict the amount of required fees that an issuer can charge during the first year after a credit card account is opened. Application of the particular rules is discussed further below.

The proposal would cover credit plans, including overdraft services and lines of credit, directly accessed by a prepaid card. This would apply where credit is being ''pulled'' by a prepaid card, such as when the consumer uses the prepaid card at point of sale to access an overdraft plan to fund a purchase. The proposal also would cover credit plans that are not accessed directly by a prepaid card but are structured as a ''push'' account. Under such a credit plan, a person would provide credit accessed by an account number where such extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the person, and cannot be deposited directly into another asset account, such as a deposit account. For example, such a credit plan may allow a consumer to use an account number to request an extension of credit be deposited directly into a particular prepaid account specified by the creditor when the consumer does not have adequate funds in the prepaid account to cover the full amount of a transaction using the prepaid card and the consumer is contractually obligated to repay the credit. A credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the person would mean that the credit plan allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. As discussed in more detail below, the Bureau believes these types of credit plans could act as substitutes for credit plans directly accessed by a prepaid card. The Bureau is not, however, intending to cover general purpose lines of credit where a consumer has the freedom to choose where to deposit directly the credit funds.

Definition of finance charge. As discussed in more detail in the section-

[358] When the Board amended comment 12(a)(1)–7 in 1999, it stated that the revisions clarified the comment's applicability to then-recent programs where unsolicited cards were marketed from the outset as both stored-value cards and credit cards. *See* 64 FR 16614, 16615 (Apr. 6, 1999).

[359] As discussed in more detail in the section-by-section analysis of § 1026.2(a)(20), with respect to credit accessed by a prepaid card or an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the person, a person would not be a creditor that is extending open-end credit where the person is not charging a finance charge for the credit. Nonetheless, as discussed in more detail in the section-by-section analysis of § 1026.2(a)(17), such persons may still be subject to Regulation Z in certain circumstances.

by-section analysis of § 1026.4, under Regulation Z, the term ''finance charge'' generally is defined in § 1026.4(a) to mean ''the cost of consumer credit as a dollar amount.'' It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It generally does not include any charges of a type payable in a comparable cash transaction. Currently, certain fees or charges are specifically excluded from the term ''finance charge,'' such as (1) charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (2) fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. *See* § 1026.4(c)(3) and (4).

The proposal would amend § 1026.4 and its commentary to provide that these two exceptions do not apply to credit accessed by a prepaid card or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In addition, the proposal would make other amendments to § 1026.4 and its commentary to provide additional clarification and guidance as to what types of fees and charges constitute ''finance charges'' related to credit accessed by a prepaid card or credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. For such credit, any service, transaction, activity, or carrying charges imposed on the credit account, and any such charges imposed on a prepaid account if that charge is related to an extension of credit, carrying a credit balance, or credit availability, generally would be a finance charge. *See* § 1026.4(a), (b)(2), (c)(3) and (4) and comments 4(a)–4 and 4(b)(2)–1.

Such charges would include periodic participation fees for the credit plan, as well as transaction charges imposed in connection with a credit extension. For example, assume a $1.50 transaction charge is imposed on the prepaid account for each transaction that is made with the prepaid card, including when the prepaid card is used to access credit where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization or at the time the transaction is paid. The $1.50 transaction charge would be a finance charge when the prepaid card accesses credit, notwithstanding that a $1.50 transaction charge also is imposed on transactions that solely access funds in the prepaid account. The proposal would provide, however, that the term finance charge does not include transaction fees imposed on the prepaid account where the consumer is only withdrawing funds from the prepaid account, fees for opening or holding the prepaid account, and other fees, such as cash reload fees and balance inquiry fees, that are not imposed on the prepaid account because the consumer engaged in a transaction that is funded in whole or in part by credit, for holding a credit plan, or for carrying a credit balance.

As a result of these proposed changes to the definition of finance charge and related commentary, a person that is offering credit accessed by a prepaid card, or other credit plan linked to prepaid accounts that is accessed by an account number as described above, that is charging fees that are finance charges would be a ''creditor'' under Regulation Z. The term ''creditor'' generally means 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. *See* § 1026.2(a)(17)(i). As discussed above, the Bureau is declining to extend provisions that exempt financial institutions that offer overdraft services on traditional deposit accounts from the definition of creditor to financial institutions that offer overdraft services on prepaid accounts.

Definition of ''open-end credit.'' As discussed above in the Overview of Regulation Z Proposal section and below in the section-by-section analysis of § 1026.2(a)(20), the Bureau believes that most creditors that are offering credit plans (including overdraft services, accessed by a prepaid card, or other credit plans linked to prepaid accounts that are accessed by an account number as discussed above) and that are charging finance charges for the credit would be creditors offering ''open-end credit'' that is not home-secured. Such creditors must comply with the open-end (not home-secured) provisions set forth in subpart B.

The term ''open-end credit'' is defined in § 1026.2(a)(20) to mean consumer ''credit'' extended by a ''creditor'' under a ''plan'' in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a ''finance charge'' from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. The proposal would amend several of the definitions of these terms and provide clarifications and commentary to facilitate the classification of credit plans associated with prepaid accounts.

Specifically, the proposal would provide that the term ''credit'' under § 1026.2(a)(14) includes an authorized transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization. It also would include a paid transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid.

With respect to the term ''plan,'' the proposal would provide additional guidance on when overdraft credit is considered credit extended under a plan. In particular, the proposal would provide that with respect to credit accessed by a prepaid card or accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, for credit accessed by a prepaid card, a plan includes a program under which a creditor routinely pays transactions when a consumer has insufficient or unavailable funds in a prepaid account and the consumer is obligated contractually to repay those transactions. Similarly, for credit that is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a plan includes a program under which a creditor routinely will extend credit that is deposited directly into particular prepaid accounts specified by the creditor and the consumer is obligated contractually to repay the credit. In both cases, such programs constitute plans notwithstanding that the creditor retains discretion not to extend credit. Except as described below, the Bureau believes that most overdraft plans accessed by a prepaid card, and other credit plans linked to a prepaid account that are accessed by an account number as described above, generally will meet the other criteria for open-end credit. *See*

the discussion in the Overview of Regulation Z Proposal section and the section-by-section analysis of § 1026.2(a)(17) and (a)(20).

As described in more detail in the section-by-section analysis of § 1026.2(a)(17), a person would not be extending open-end credit where the person is not charging a finance charge for the credit that is accessed by a prepaid card or accessed by an account number as described above. Nonetheless, the person could still be subject to certain provisions in Regulation Z in certain circumstances, as discussed below.

Definition of ''credit card'' and ''card issuer.'' Regulation Z defines the term ''credit card'' in § 1026.2(a)(15)(i) to mean ''any card, plate, or other single credit device that may be used from time to time to obtain credit.'' The term ''card issuer'' is defined in § 1026.2(a)(7) to defined to mean ''a person that issues a credit card or that person's agent with respect to the card.'' Under the proposal, certain devices related to prepaid accounts would be credit cards under § 1026.2(a)(15)(i). In particular, the proposal provides that a prepaid card that is a single device that may be used from time to time to access a credit plan generally is a ''credit card'' and the person issuing the card is a ''card issuer.'' As discussed above, a prepaid card would be accessing a credit plan when the consumer is obligated contractually to repay the credit. The proposal provides that a prepaid card would not be a credit card, however, where the prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee that is described in § 1026.4(c) and is not payable by written agreement in more than four installments. A person that offers a credit plan that is accessed only by prepaid cards that falls within the exclusion to the definition of ''credit card'' would be subject solely to the requirements under Regulation E. *See* section-by-section analysis of § 1026.2(a)(15)(i).

Also, as discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i), the proposal also provides that an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor would be a credit card under § 1026.2(a)(15)(i).

Definition of ''credit card account under an open-end (not home secured) consumer credit plan.'' Certain credit card rules in Regulation Z, which generally are set forth in subpart G, apply to card issuers with respect to a ''credit card account under an open-end (not home secured) consumer credit plan.'' § 1026.1(d)(7). These credit card rules include provisions that prohibit credit card issuers from extending credit without assessing the consumer's ability to pay and restrict the amount of required fees that an issuer can charge during the first year after a credit card account is opened. *See, e.g.,* §§ 1026.5(b)(2)(ii), 1026.7(b)(11), and 1026.51 through 1026.59.

Regulation Z defines the term ''credit card account under an open-end (not home-secured) consumer credit plan'' in § 1026.2(a)(15)(ii) to mean ''any open-end credit account that is accessed by a credit card, except: (A) [a] home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card; or (B) [a]n overdraft line of credit that is accessed by a debit card or an account number.'' Generally, to be a ''credit card account under an open-end (not home-secured) consumer credit plan,'' the credit must be ''open-end credit'' as defined in § 1026.2(a)(20) that is not home-secured and the credit must be accessed by a ''credit card'' as defined in § 1026.2(a)(15)(i). The Bureau also proposes to revise the definitions of ''credit card account under an open-end (not home-secured) consumer credit plan'' in § 1026.2(a)(15)(ii) and its commentary to include an open-end (not home-secured) credit plan accessed by a prepaid card that is a credit card or by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

2(a)(7) Card Issuer

TILA defines the term ''card issuer'' as ''any person who issues a credit card, or the agent of such person with respect to such card.'' 15 U.S.C. 1602(o). Consistent with the TILA definition, Regulation Z defines the term ''card issuer'' in § 1026.2(a)(7) as ''a person that issues a credit card or that person's agent with respect to the card.'' The Regulation further defines the term ''credit card'' in § 1026.2(a)(15)(i) to mean ''any card, plate, or other single credit device that may be used from time to time to obtain credit.'' Card issuers must comply with certain provisions in Regulation Z as applicable. *See* §§ 1026.12 and .60; for card issuers offering a ''credit card account under an open-end (not home-secured) consumer credit plan,'' *see, e.g.,* §§ 1026.5(b)(2)(ii), .7(b)(11), and .51 through .59. In addition, card issuers that extend credit would be considered creditors for purposes of Regulation Z. *See* § 1026.2(a)(17)(iii) and (iv).

As discussed in the section-by-section analysis of proposed § 1026.2(a)(15)(i), proposed comment 2(a)(15)–2.i.F would provide that the term ''credit card'' generally includes a prepaid card (as defined in proposed § 1026.2(a)(15)(v) to mean any card, code, or other device that can be used to access a prepaid account as that term is proposed to be defined in Regulation E) that is a single device that may be used from time to time to access a credit plan. A person that is issuing a prepaid card that is a credit card would be a ''card issuer'' under § 1026.2(a)(7).

Nonetheless, under proposed comment 2(a)(15)–2.i.F, the term credit card would not include a prepaid card if the prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee describe in § 1026.4(c) and is not payable by written agreement in more than four installments. *See* section-by-section analysis of § 1026.4 for a discussion of the term ''finance charge'' and fees described in § 1026.4(c).

If the prepaid account is accessed only by a prepaid card that does not meet the definition of credit card because the card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments, the person issuing the card would not be a ''card issuer'' and the person would not need to comply with the credit card rules in Regulation Z. In addition, the person in extending credit accessed by such a card would not be a ''creditor'' under Regulation Z because the person would not be charging a finance charge and the credit would not be payable by written agreement in more than four installments. *See* § 1026.2(a)(17)(i). Thus, the person would not need to comply with the disclosure and other requirements in Regulation Z that apply to creditors. The person would be subject, however, to the requirements under Regulation E. *See* section-by-section analysis of § 1026.2(a)(15)(i).

Given that no finance charges or fees described in § 1026.4(c) would be charged in connection with the credit, the Bureau anticipates that the credit limit under such plans will be quite low, perhaps $10 or less. Given the expected-low credit limits and the fact that no finance charge or fees described in § 1026.4(c) would be charged for this credit, the Bureau believes that it is appropriate to cover these credit transactions under Regulation E as incidental to the prepaid transaction and exclude prepaid cards that access only this type of credit from the

definition of ''credit card'' for purposes of Regulation Z.

Consistent with the proposed definition of ''credit card,'' proposed comment 2(a)(7)–2 would explain that with respect to credit accessed by a prepaid card, a person is not a card issuer if the card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. For example, a person is not a card issuer if (1) the prepaid card only accesses credit where the person does not impose any finance charge as defined in § 1026.4 or fee described in § 1026.4(c); and (2) the person expects repayment when funds are deposited into the prepaid account. In this case, the prepaid card is not a credit card and the person issuing the card is not a card issuer. *See proposed* comment 2(a)(15)–2.i.F.

Prepaid Card That Accesses a Credit Plan Offered by a Third Party

As noted above, under TILA and Regulation Z, the definition of ''card issuer'' means both a person who issues a credit card as well as the person's agent with respect to the card. Comment 2(a)(7)–1 currently provides guidance on the term ''agent'' for purposes of the definition of ''card issuer.'' Specifically, comment 2(a)(7)–1 provides that because agency relationships are traditionally defined by contract and by state or other applicable law, Regulation Z generally does not define agent. Nonetheless, comment 2(a)(7)–1 provides that merely providing services relating to the production of credit cards or data processing for others does not make one the agent of the card issuer. In contrast, comment 2(a)(7)–1 provides that a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

The proposal would provide specific guidance on the term ''agent'' for purposes of § 1026.2(a)(7) where a credit plan offered by a third party is accessed by a prepaid card that is a credit card. This would apply where credit is being ''pulled'' by a prepaid card that is a credit card. In this case, the prepaid card is being used to pull credit from a credit plan that is offered by a third party other than the prepaid card issuer. Under the proposal, the third party offering the credit plan that is accessed by the prepaid card would be considered an agent of the prepaid card issuer and would be a card issuer for purposes of § 1026.2(a)(7). Specifically, proposed comment 2(a)(7)–1.ii would build on the last sentence of the current comment and provide that with respect to a prepaid card that is a credit card where the card directly accesses a credit plan that is offered by a third party, the proposal would specify that a party offering the credit plan that is accessed by the card would be an agent of the person issuing the prepaid card and thus, would be a card issuer with respect to the prepaid card that is a credit card.

The Bureau notes that current comment 2(a)(7)–1 provides that a financial institution *may* become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card. However, the Bureau believes that it is important in this context to make clear when there is an agent relationship to prevent circumvention of the proposed rules applicable to credit card accounts directly accessed by a prepaid card. The Bureau is concerned that without the proposed provision, prepaid card issuers could structure arrangements with third parties that offer open-end credit plans that are accessed directly by the prepaid card to avoid an agency relationship under state law. Such a result could frustrate the operation of certain consumer protections provided in the proposal.

For example, § 1026.51(a) provides that a card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations. In a case where the issuer of the prepaid card is not the person offering a credit card account under an open-end (not home-secured) consumer credit plan, the responsibilities imposed on the card issuer under § 1026.51(a) might be unclear since the card issuer will not be the person opening the credit card account. Nonetheless, the provision applies to a ''card issuer,'' so it is also unclear what responsibilities are imposed on the third party given that the third party is not a card issuer. Thus, the proposal would specify in proposed comment 2(a)(7)–1.ii that the third party offering the credit plan that is accessed directly by the prepaid card would be an agent of the person issuing the prepaid card and thus, would be a card issuer with respect to that prepaid card. As a result, in the example above related to § 1026.51(a), the third party would be a ''card issuer'' for purposes of that provision and would be required to comply with it. The Bureau also proposes to renumber existing comment 2(a)(7)–1 as 2(a)(7)–1.i.

2(a)(14) Credit

In TILA, the term ''credit'' is defined to mean ''the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.'' 15 U.S.C. 1602(f). Consistent with the definition of credit in TILA, under Regulation Z, the term ''credit'' is defined in § 1026.2(a)(14) to mean ''the right to defer payment of debt or to incur debt and defer its payment.'' A person is subject to certain disclosure and other requirements in Regulation Z if the person is a creditor. A person is a creditor if the person 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. *See* § 1026.2(a)(17)(i). The term ''creditor'' also includes any card issuer (which is a person that issues credit cards or the person's agent) that extends credit even if no finance charge is imposed and repayment is not permitted in more than four installments. *See* § 1026.2(a)(17)(iii).

For the reasons discussed in the Overview of Regulation Z Proposal section, the Bureau believes it is reasonable to interpret ''credit'' to include when overdrafts are paid in relation to prepaid accounts. The proposal provides additional guidance that would express and effectuate this interpretation. In particular, proposed comment 2(a)(14)–3 would provide that credit for purposes of § 1026.2(a)(14) includes an authorized transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization. It also includes a paid transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. Thus, the definition includes a situation where the consumer has sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction is authorized, but insufficient or unavailable funds in the

prepaid account to cover the amount of the transaction at the time the transaction is paid. As discussed in more detail in the Overview of Regulation Z Proposal section, the Bureau believes that plain language of the definition of ''credit'' in TILA covers the situation in that a consumer makes a transaction which exceeds the funds in the consumer's account and a person elects to cover the transaction by advancing funds to the consumer which the consumer must repay. Nothing in that part of TILA (or elsewhere in the statute) exempts overdraft services, including those that may be offered in connection with a prepaid account. By authorizing or paying a transaction where the consumer does not have sufficient or available funds in the prepaid account to cover the amount of the transaction when the transaction is authorized or paid, the person is allowing the consumer to incur a debt with the person where payment of that debt is not immediate.

A person that authorizes or pays such transactions would be extending credit and would be subject to certain disclosure and other requirements in Regulation Z if the person is a creditor. As discussed above, a person is a creditor if the person 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. *See* § 1026.2(a)(17)(i). The term ''creditor'' also includes any card issuer (which is a person that issues credit cards or the person's agent) that extends credit even if no finance charge is imposed and repayment is not permitted in more than four installments. *See* § 1026.2(a)(17)(iii). As discussed in more detail in the section-by-section analysis of § 1026.4, with respect to credit accessed by a prepaid card that is a credit card, or by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a person generally would be charging a finance charge for the credit if the person imposes any service, transaction, activity, or carrying charges on the credit account, or imposes any such charges on a prepaid account if that charge is related to an extension of credit, carrying a credit balance, or credit availability. *See* § 1026.4(a), (b)(2), (c)(3) and (4) and comments 4(a)–4 and 4(b)(2)–1. Such charges would include periodic participation fees for the credit plan, and transaction charges imposed in connection with a credit extension.

With respect to credit accessed by a prepaid card that is a credit card, or by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a person also would be a creditor if the person is a card issuer that extends credit accessed by the credit card. With respect to such credit, a person would be a card issuer if the person issues (1) a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments; or (2) an account number that is not a prepaid card that may be used from time to time to access a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor.

The Bureau notes that for credit that is being accessed by a prepaid card that is a credit card, the creditor would be required to disclose credit extensions on the periodic statement under § 1026.7(b)(2), including a transaction where there are insufficient funds in the prepaid account at authorization to cover the amount of the transaction. The creditor also would be restricted under the offset provision in § 1026.12(d) from automatically applying any deposit to the prepaid account to repay the credit card balance. For example, for a transaction that is authorized where there are insufficient funds in the prepaid account to cover the amount of the transaction, the creditor could not use subsequent deposits received on the same day as the transaction to repay automatically that credit transaction on the credit card account.

The Bureau generally solicits comment on the definition of credit with respect to prepaid accounts. As discussed above, under the proposal, credit includes (1) transactions that are authorized where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization; and (2) transactions on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. Such transactions are credit regardless of whether the person establishes a separate credit account to extend the credit or whether the credit is simply reflected as a negative balance on the prepaid account. Nonetheless, the Bureau believes that creditors will tend to establish separate credit accounts to extend that credit accessed by the prepaid card, instead of having the credit balance be reflected as a negative balance on the prepaid account, because creditors generally will find that separate credit accounts aid compliance with the periodic statement requirements in §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) and the offset provisions in § 1026.12(d)(3) that would apply to credit card accounts accessed by prepaid cards. *See* section-by-section analysis of §§ 1026.5(b)(2)(ii), 1026.7(b)(11) and 1026.12(d)(3). The Bureau solicits comment on whether creditors are likely to establish separate credit accounts, instead of having the credit balance be reflected as a negative balance on the prepaid account. The Bureau also solicits comment on any implications for compliance depending on how the account is structured (*i.e.,* whether a separate credit account is created or whether the credit balance is reflected as a negative balance on the prepaid account), and whether any differentiation in regulation or guidance would be useful.

As discussed in more detail in the Overview of Regulation Z Proposal section, with respect to overdraft services on checking accounts, while a person that is providing overdraft services generally would be providing credit under TILA and Regulation Z, the person generally does not meet the definition of ''creditor'' for purposes of Regulation Z because of certain exclusions to the definition of finance charge. *See* § 1026.4(c)(3). Thus, with respect to overdraft services on checking accounts, a financial institution that does not agree in writing to pay the items and does not structure the repayment of the credit by written agreement in more than four installments would not be a ''creditor'' under the general definition of creditor, even if the institution charges a fee for paying the overdraft item because the fee would not be a ''finance charge.'' In addition, a person does not become a creditor by issuing a debit card to access an overdraft service. *See* comment 2(a)(15)–2.ii.A (explaining that the definition of ''credit card'' provides that a debit card is not a credit card if there

is no credit feature or agreement to extend credit, even if the creditor occasionally honors an inadvertent overdraft). The Bureau is not proposing to change how overdraft services on accounts other than prepaid accounts are treated under Regulation Z.

2(a)(15)

2(a)(15)(i) Credit Card

In TILA, the term ''credit card'' is defined to mean ''any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.'' 15 U.S.C. 1602(*l*). Under Regulation Z, the term ''credit card'' is defined in § 1026.2(a)(15)(i) to mean ''any card, plate, or other single credit device that may be used from time to time to obtain credit.'' Current comment 2(a)(15)(i)–2 provides examples of devices that are credit cards and devices that are not credit cards. A person that issues credit cards or the person's agent is a ''card issuer'' and must comply with certain credit card provisions in Regulation Z as applicable. *See* §§ 1026.12 and .60; for card issuers offering a ''credit card account under an open-end (not home-secured) consumer credit plan,'' *see, e.g.,* §§ 1026.5(b)(2)(ii), .7(b)(11), and .51 through .59. Any card issuer that extends credit is also a creditor under Regulation Z and must comply with certain disclosure and other requirements in Regulation Z, a discussed in the section-by-section analysis of § 1026.2(a)(17).

The proposal would provide guidance on when the following devices related to prepaid accounts are ''credit cards:'' (1) Prepaid cards, as defined in proposed § 1026.2(a)(15)(v) to mean any card, code, or other device that can be used to access a prepaid account as defined in Regulation E; and (2) account numbers that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor but do not allow consumers to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor, as defined in § 1026.2(a)(15)(vii).

Under the proposal, credit plans, including overdraft services and overdraft lines of credit, that are directly accessed by certain prepaid cards would be a credit card account under Regulation Z. In particular, proposed comment 2(a)(15)–2.i.F would provide that the term ''credit card'' includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. A prepaid card that is solely an account number would be a credit card if it satisfies the requirements of proposed comment 2(a)(15)–2.i.F.

With respect to overdraft services or overdraft lines of credit, the prepaid card would be ''pulling'' credit from the credit card account where there are insufficient funds in the prepaid account to cover the amount of the transaction at authorization or settlement. An account where credit is pulled from a credit card account using a prepaid card is referred in this supplemental information as a ''pull account.''

As discussed further below in connection with § 1026.2(a)(15)(vii), the proposal also covers credit plans that are not directly accessed by a prepaid card, but are structured as ''push'' accounts. Specifically, the proposal would address situations where a separate credit plan is accessed by an account number where consumers are allowed to deposit directly credit extensions taken under the plan into particular prepaid accounts specified by the creditor but would not be allowed to deposit directly extensions of credit from the plan into asset accounts other than the specified prepaid accounts. Such a credit plan would still be covered under the proposal where a consumer could access the credit plan by use of checks or in-person withdrawals, so long as the credit plan allows deposits directly only into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit into an asset account other than specified prepaid accounts. *See* proposed comment 2(a)(15)–5. In referring to account numbers that access credit plans linked to prepaid accounts as discussed above, the proposal uses the term ''account number where extensions of credit are permitted to be deposited directly only into particular prepaid account specified by the creditor.'' *See* proposed § 1026.2(a)(15)(vii). The proposal would provide that these credit plans would be credit card accounts under Regulation Z. *See* proposed comment 2(a)(15)–2.i.G.

The Bureau believes that credit plans will either be structured as ''pull'' accounts where a prepaid card is used directly to access credit from the credit plan or structured as ''push'' accounts where an account number is used to access credit that typically is deposited directly into the prepaid account. For example, the Bureau does not believe that a prepaid card account number would be used to push credit into the prepaid account, but instead will only be used to pull credit from the credit plan, such as when a consumer uses the prepaid card at point of sale or at an ATM to access credit directly. Thus, under the proposal, a prepaid card account number would not be an ''account number where extensions of credit are permitted to be deposited directly only into particular prepaid account specified by the creditor,'' as that term is defined in proposed § 1026.2(a)(15)(vii). Likewise, an account number as defined in proposed § 1026.2(a)(15)(vii) would not be used to access funds in the prepaid account and thus, would not be a prepaid card under proposed § 1026.2(a)(15)(v). The Bureau solicits comment on the distinction between a prepaid card account number that is a credit card under proposed § 1026.2(a)(15)(v) and comment 2(a)(15)–2.i.F and an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid account specified by the creditor as defined in proposed § 1026.2(a)(15)(vii) and comment 2(a)(15)–2.i.G. The Bureau also solicits comment on whether there could be situations where a prepaid card account number could be viewed as pushing credit into a prepaid account.

Generally, the proposal would treat credit card accounts that are accessed by a prepaid card and credit card accounts that are accessed by an account number linked to prepaid accounts as discussed above similarly under the rules. Nonetheless, for some provisions, credit extensions under these two types of credit card accounts would be treated differently. *See* proposed comments 8(a)–2.ii, 8(b)–1.vi, 12(c)–5, 12(c)(1)–1.i, 13(a)(3)–2.ii, 13(i)–1 and –4, 52(a)(2)–2 and –3, 60(b)(4)–3, and 60(b)(8)–4 and –5.

This proposed difference in treatment generally results from the fact that for a credit card account that is accessed by a prepaid card, the prepaid card can be used to directly access the credit to purchase goods or services. For example, credit accessed by a prepaid card at point of sale would be treated as a ''sale credit'' under § 1026.8(a) because the prepaid card is directly accessing credit to purchase goods or services. On the other hand, for a credit card account accessed by an account number described in proposed § 1026.2(a)(15)(vii), credit that is

extended typically would be deposited into the prepaid account. The account number that accesses the credit is not typically viewed as directly used to purchase goods or services with the credit. For example, credit accessed by an account number linked to a prepaid account would be ''nonsale credit'' under § 1026.8(b) because it would not be used directly to purchase goods or services.

The Bureau believes that these types of ''push accounts'' could be offered as substitutes for overdraft credit plans accessed by a prepaid card, and if they were not covered, creditors could be able to circumvent the consumer protections set forth in the proposal. Nonetheless, the Bureau is not attempting to cover general lines of credit where consumers are not restricted from depositing directly credit extensions taken under the plan into asset accounts of their choosing, including prepaid accounts. The Bureau believes that those types of credit plans are not acting as substitutes for overdraft credit plans because these general lines of credit are not designed to provide credit in connection with particular prepaid accounts. The Bureau solicits comment on this approach, and whether the proposal appropriately covers the types of credit plans that may act as substitutes for overdraft credit plans accessed by prepaid cards.

The Bureau also solicits comment on whether there are alternative ways to address credit plans that may act as substitutes for overdraft credit plans accessed by prepaid cards. For accounts that permit deposits directly into accounts other than prepaid accounts specified by the creditor, and thus would not be covered above under the proposal, the Bureau seeks comment on whether it should attempt to cover such accounts when they are being used by agreement to push funds to cover specific negative balance purchases. For example, should the rule cover the following situation as a push account: where the prepaid card issuer and a third-party creditor have an arrangement where the prepaid card issuer will notify the consumer that there are insufficient funds in the prepaid account to complete a transaction and contemporaneously prompt the consumer to transfer funds to complete the transaction. The Bureau solicits comment on whether there are other types of account structures that the Bureau should consider covering under the rule, and if so, whether the account structure should be considered a ''push'' account or a ''pull account'' for purposes of the rule, given that in some cases, different rules would apply under the proposal depending on the how account is structured, as discussed above.

To be a credit card, the prepaid card, or account number that accesses an account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, must be a single device that may be used from time to time to access a credit plan.[360] Current comment 2(a)(15)–1 reiterates that a credit card must be usable from time to time. The comment also provides that since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

The proposal would revise this comment to provide additional guidance on the treatment of preauthorized checks in relation to prepaid accounts. As is described above, preauthorized checks are checks where by a consumer must seek authorization before presenting them for payment. At the time of preauthorization, funds to pay the check are deducted from the account and held by the institution until the check is presented. The proposal would explain in comment 2(a)(15)–1 that with respect to a preauthorized check that is issued on a prepaid account for which the funds are withdrawn at the time of preauthorization using the prepaid account number, the credit would be considered obtained using the prepaid account number and not the check. Under the proposal, a prepaid account number typically would be a credit card unless it qualifies for an exception, as discussed below.

Nonetheless, even if the prepaid card is a single device that may be used from time to time to access a credit plan, the prepaid card still would not be a credit card under § 1026.2(a)(15)(i) if the prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. As discussed in the section-by-section analysis of § 1026.4, with respect to credit accessed by a prepaid card or credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, any service, transaction, activity, or carrying charges imposed on the credit account, and any such charges imposed on a prepaid account if that charge is related to an extension of credit, carrying a credit balance, or credit availability, generally would be a finance charge. *See* § 1026.4(a), (b)(2), (c)(3) and (4) and comments 4(a)–4 and 4(b)(2)–1. Fees described in § 1026.4(c) that are not finance charges include application fees to apply for credit, late payment fees, over-the-limit fees, and returned payment fees.

To the extent that a prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments, the prepaid card would not be a credit card. To effectuate the purpose of TILA to promote informed use of credit and to facilitate compliance, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a), to propose to exclude such prepaid cards from the definition of ''credit card'' under TILA section 103(*l*) and Regulation Z § 1026.2(a)(15)(i). 15 U.S.C. 1602(*l*). If the credit plan is accessed only by a prepaid card that does not meet the definition of credit card because the card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments, the person issuing the card would not be a ''card issuer'' and the person would not need to comply with the credit card rules in Regulation Z. In addition, the person in extending this type of credit would not be a ''creditor'' under Regulation Z because the person would not be charging a finance charge and the credit would not be payable by written agreement in more than four installments. *See* § 1026.2(a)(17)(i). Thus, the person would not need to comply with the disclosure and other requirements in Regulation Z that apply to creditors.

The proposed provision would facilitate compliance by allowing a person who is providing such credit to comply only with Regulation E with respect to the prepaid account and this credit, instead of also complying with Regulation Z with respect to the overdraft credit. The Bureau believes

[360] As discussed in the section-by-section analysis of proposed § 1026.2(a)(20), under the proposal, a person would be extending credit pursuant to a plan where the person pays transactions using a prepaid card where there are insufficient funds in a prepaid account to fund the transactions and the consumer is obligated contractually to repay the credit. In addition, a person would be extending credit pursuant to a plan where the person extends credit to a consumer where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor and the consumer is obligated contractually to repay the credit.

that the term ''credit card'' was defined broadly in Regulation Z to ensure that consumers who obtain access devices that access credit receive certain protections, such as receiving periodic statements, limits on liability for unauthorized use and billing error resolution rights, even if a person in issuing the access device would not have met the general definition of creditor in 1026.2(a)(17)(i) because no finance charge is imposed and the credit is not payable in more than four installments. Such access devices that are not linked to an asset account would not receive such protections, such as limits on liability for unauthorized use and billing error resolution rights, if the credit accessed by these access devices were not covered by Regulation Z. Nonetheless, for prepaid cards, the Bureau believes that the proposed protections in Regulation E for prepaid cards would be sufficient to protect consumers when credit extended under a credit plan accessed by a prepaid card is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments.

Given that no finance charges or fees described in § 1026.4(c) would be charged under the credit plan under this exception and that the Bureau anticipates that the credit limit under such plans would be quite low, perhaps $10 or less, and the credit would not be structured to be paid over a significant amount of time, the Bureau believes that consumers are unlikely to be become overextended in using this credit and incurring substantial fees. Thus, to facilitate compliance, the Bureau believes that this type of credit plan is more properly regulated under Regulation E as credit incidental to the prepaid card transaction. For example, as discussed in more detail in the section-by-section analysis of Regulation E proposed § 1005.12(a), Regulation E's provisions in §§ 1005.11 and 1005.18(e) regarding a consumer's liability for an unauthorized electronic fund transfer and regarding the investigation of errors would apply to extensions of this credit. In addition, such credit extensions would be disclosed on Regulation E periodic statements if the financial institution elects to provide such statements under proposed § 1005.18(c)(1), or alternatively, would be disclosed on the electronic history of the consumer's prepaid account transactions, such as through a Web site, that covers at least 18 months preceding the date the consumer electronically accesses the account under Regulation E proposed § 1005.18(c)(1)(ii).

The Bureau also notes that the opt-in provision in Regulation E § 1005.17 would not apply to credit extended under a credit plan accessed by a prepaid card that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. Section 1005.17 sets forth requirements that financial institutions must follow in order to provide ''overdraft services'' to consumers related to consumer's accounts. For prepaid accounts, any fees or charges for ATM or one-time ''debit card'' transactions (as that term is used in Regulation E to generally include prepaid cards; *see* proposed comment 1005.2(b)(3)(i)–8) that access an institution's overdraft service would be considered ''finance charges'' under the proposal and thus would exceed the scope of the proposed exception because it is limited to credit on prepaid accounts for which no finance charges or fees described in § 1026.4(c) are imposed. The Bureau nevertheless seeks comment on whether it should apply Regulation Z to such credit.

The Bureau notes that the proposal does not provide a similar exception for account numbers that are not prepaid cards that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. *See* proposed § 1026.2(a)(15)(vii) and comment 2(a)(15)–2.i.G. Such a credit plan would be covered under the proposal even if the credit plan could be accessed by use of checks or in-person withdrawals, so long as the credit plan is accessed by an account number where extensions of credit are allowed to be deposited directly into particular prepaid accounts specified by the creditor and the consumer is not permitted to deposit directly extensions of credit into an asset account other than particular prepaid accounts specified by the creditor. *See* proposed comment 2(a)(15)–5. Under the proposal, these account numbers would be credit cards regardless of whether credit extended under such credit plans is subject to a finance charge or a fee described in § 1026.4(c) or is payable by written agreement in more than four installments. The Bureau believes that an exception is not appropriate for these types of credit plans because not all credit extensions under such credit plans would be subject to Regulation E protections if Regulation Z did not apply. Although Regulation E would apply to credit extensions that are deposited in a prepaid account by use of an electronic fund transfer, Regulation E would not apply to extensions of credit that are accessed by check or in person withdrawals where the transaction does not involve an electronic fund transfer to or from the prepaid account. The Bureau also believes that an exception for this type of credit is not necessary because creditors that establish a separate credit plan that is accessed by an account number that is not a prepaid card typically will charge a finance charge or fee described in § 1026.4(c) for the credit. The Bureau solicits comment on this approach.

Under the proposal, a person that issues such an account number would be a ''card issuer'' under § 1026.2(a)(7) even if the account number only accesses credit that is not subject to a finance charge or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. In addition, the person would be a ''creditor'' by issuing a credit card that accesses credit that is not subject to a finance charge and is not payable by written agreement in more than four installments. *See* § 1026.2(a)(17)(iii). The person would be required to comply with rules governing open-end (not home-secured) credit plans in subpart B and the credit card rules set forth in subpart B. The rules implementing the Credit CARD Act, generally set forth in subpart G, would not apply because the person would not be charging a finance charge for the credit, and thus, would not be extending ''open-end credit.'' For more a detailed discussion, *see* the section-by-section analysis of § 1026.2(a)(17).

Prepaid Cards or Account Numbers That Are Credit Cards

As discussed above, proposed comment 2(a)(15)–2.i.F would provide that the term ''credit card'' includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. Proposed § 1026.2(a)(15)(vii) and comment 2(a)(15)–2.i.G would provide that the term ''credit card'' includes an account number that is not a prepaid card that may be used from time to time to access

a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor.

If a person issues a prepaid card or account number as described above that is a credit card, the person would be a ''card issuer'' under § 1026.2(a)(7). The person would also be a ''creditor'' if the card issuer extends credit accessed by the prepaid card or account number as described above. *See* § 1026.2(a)(17)(iii) and (iv). If the card issuer extends open-end credit, the person generally would need to comply with the open-end (not home-secured) rules set forth in subpart B and the credit card rules set forth in subparts B and G. As discussed above in the Overview of Regulation Z Proposal section and below in the section-by-section analysis of § 1026.2(a)(20), the Bureau believes that most creditors that are offering credit plans, including overdraft credit services, accessed by a prepaid card, or other credit plans linked to prepaid accounts that are accessed by an account number as discussed above, that are charging finance charges for the credit would be creditors offering ''open-end credit'' under Regulation Z. *See* the section-by-section analysis of § 1026.2(a)(17) for a discussion of situations in which a creditor may not be offering open-end credit in relation to a prepaid account.

Account Numbers

Comment 2(a)(15)–2.ii.C currently provides that the term ''credit card'' does not include an account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of § 1026.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of § 1026.2(a)(15)(i), regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction. Furthermore, if the line of credit can also be accessed by a card (such as a debit card), that card is a credit card for purposes of § 1026.2(a)(15)(i).

In 2011, the Board adopted comment 2(a)(15)–2.ii.C as part of implementing the Credit CARD Act provisions. In the supplemental information to the final rule, the Board stated that because most if not all credit accounts can be accessed in some fashion by an account number, the Board did not believe that Congress generally intended to treat account numbers that access a credit account as credit cards for purposes of TILA.[361] However, the Board was concerned that, when an account number can be used to access an open-end line of credit to purchase goods or services, the Board believed it would be inconsistent with the purposes of the Credit CARD Act to exempt the line of credit from the protections provided for credit card accounts. For example, creditors may offer open-end credit accounts designed for online purchases that function like a traditional credit card account but can only be accessed using an account number. In these circumstances, the Board believed that TILA's credit card protections should apply.

The proposal would revise comment 2(a)(15)–2.ii.C to indicate that the comment does not apply to prepaid cards and account numbers described in proposed comments 2(a)(15)–2.i.F and G. Comment 2(a)(15)–2.ii.C generally would not apply to prepaid cards because such cards generally could be used to purchase goods or services, even if the prepaid card was solely an account number. In addition, as discussed in the Overview of Regulation Z Proposal section, the Bureau is concerned that if lines of credit that are accessed by an account number are not considered credit cards when credit extensions can be deposited directly only into particular prepaid accounts specified by the creditor, they would be offered as a means of evading the requirements articulated in this proposal that apply to credit cards under TILA. Thus, the Bureau does not believe that such credit plans should be exempted from the definition of credit card and proposes to cover such credit plans as credit card accounts.

Technical Revisions

The proposal also provides a technical revision to accommodate the changes discussed above. Specifically, comment 2(a)(15)–2.i.B currently provides guidance on when a debit card is a credit card, and the comment provides examples of credit cards that include ''a card that accesses both a credit and an asset account (that is, a debit-credit card).'' Proposed § 1026.2(a)(15)(iv) would define the term ''debit card'' for purposes of Regulation Z to mean ''any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.'' Because the term ''debit card'' under the proposal would not include all cards that access asset accounts, comment 2(a)(15)–2.i.B would be revised to be consistent with the proposed definition of debit card. No substantive changes are intended to the current rules for when debit cards are credit cards under § 1026.2(a)(15)(i).

2(a)(15)(ii) Credit Card Account Under an Open-end (Not Home-secured) Consumer Credit Plan

Under Regulation Z, the term ''credit card account under an open-end (not home-secured) consumer credit plan'' is defined in § 1026.2(a)(15)(ii) to mean ''any open-end credit account that is accessed by a credit card, except: (A) [a] home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card; or (B) [a]n overdraft line of credit that is accessed by a debit card or an account number.'' Certain requirements in the Credit CARD Act, which are generally set forth in subpart G, apply to card issuers offering a credit card account under an open-end (not home-secured) consumer credit plan. *See, e.g.,* §§ 1026.5(b)(2)(ii), .7(b)(11), .51 to .59.

Generally, to be a ''credit card account under an open-end (not home-secured) consumer credit plan,'' the credit must be ''open-end credit'' as defined in § 1026.2(a)(20) and the credit must be accessed by a ''credit card'' as defined in § 1026.2(a)(15)(i). As discussed above in the Overview of Regulation Z Proposal section and in the section-by-section analysis of § 1026.2(a)(20), the Bureau anticipates that most credit accessed by a prepaid card would meet the definition of ''open-end credit'' if the creditor offering the plan may impose a finance charge for the credit.[362] In addition, under the

[361] 76 FR 22948, 22949 (Apr. 25, 2011).

[362] As discussed in more detail below in the section-by-section analysis of § 1026.2(a)(17), a person would not be a creditor that is extending open-end credit where the person extends credit accessed by a prepaid card but the person is not charging a finance charge for the credit. Similarly, a person extending credit accessed by an account number where such extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the person also would not be extending open-end credit if the person is not charging a finance charge for the credit. Nonetheless, as discussed in the section-by-section analysis of § 1026.2(a)(17), such persons may still be subject to certain Regulation Z requirements under certain circumstances.

proposal, a prepaid card that is a single device that may be used from time to time to access such an open-end credit plan would be a credit card. Likewise, the Bureau anticipates that most credit that is deposited into a prepaid account where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor would meet the definition of ''open-end credit'' if the creditor offering the plan may impose a finance charge for the credit. Also, an account number that may be used from time to time to access such an open-end credit plan would be a credit card. Thus, an open-end credit plan accessed by a prepaid card that is a credit card or an account number that is a credit card (as described above) would be a ''credit card account under an open-end (not home-secured) consumer credit plan.''

For the reasons discussed in the Overview of Regulation Z Proposal section, the proposal also would clarify that the exception in current § 1026.2(a)(15)(ii)(B) does not apply to open-end credit plans accessed by a prepaid card or an account number as described above. Currently, § 1026.2(a)(15)(ii)(B) provides that the definition of ''credit card account under an open-end (not home-secured) consumer credit plan'' does not include an ''overdraft line of credit that is accessed by a debit card or an account number.'' The Bureau notes that the proposed definition of ''debit card'' in § 1026.15(a)(2)(iv) would exclude a prepaid card. Thus, the exception in § 1026.2(a)(15)(ii)(B) does not apply to overdraft lines of credit that are accessed by a prepaid card. In addition, the proposal would revise § 1026.2(a)(15)(ii)(B) to only include the exception for overdraft lines of credit accessed by a debit card. The proposal would move the exception for overdraft lines of credit that are accessed by account numbers from § 1026.2(a)(15)(ii)(B) to proposed § 1026.2(a)(15)(ii)(C). The proposal also would amend proposed § 1026.2(a)(15)(ii)(C) and comment 2(a)(15)–4 to provide that the exception does not apply to an overdraft line of credit that is accessed by an account number where the account number is a prepaid card that is a credit card, or the account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

2(a)(15)(iii) Charge Card

Under Regulation Z, the term ''charge card'' is defined in § 1026.15(a)(15)(iii) to mean ''a credit card on an account for which no periodic rate is used to compute a finance charge.'' Current comment 2(a)(15)–3 provides guidance on how the term ''charge card'' is used throughout the Regulation. In particular, the current comment provides that generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. This comment also explains that under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in subparts B and G generally include charge cards. The term ''charge card'' is, however, distinguished from ''credit card'' or ''credit card account under an open-end (not home-secured) consumer credit plan'' in §§ 1026.60, 1026.6(b)(2)(xiv), 1026.7(b)(11) and (b)(12), 1026.9(e) and (f), 1026.28(d), 1026.52(b)(1)(ii)(C), and Appendices G–10 through G–13. *See also* the discussion in § 1026.2(a)(20) relating to charge card accounts as open-end credit.

The Bureau proposes to revise comment 2(a)(15)–3 in a number of ways to accommodate the proposed inclusion of some forms of prepaid cards as charge cards. First, the existing text of the comment would be placed in comment 2(a)(15)–3.i and a new comment 2(a)(15)–3.ii would be added. Specifically, proposed comment 2(a)(15)–3.ii would explain that a prepaid card is a charge card if it also is a credit card where no periodic rate is used to compute the finance charge. Likewise, an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor would be a charge card if it is a credit card where no periodic rate is used to compute the finance charge. This proposed comment would also explain that unlike other charge cards, such a prepaid card or account number that accesses a credit card account under an open-end (not home-secured) consumer credit plan would be subject to the requirements in § 1026.7(b)(11), which implements certain protections in the Credit CARD Act regarding periodic statements and payment due dates. *See* the section-by-section analysis of proposed § 1026.7(b). Thus, under § 1026.5(b)(2)(ii), for credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer of a prepaid card or account number that meets the definition of a charge card because it does not impose a finance charge structured as a periodic rate would be required to adopt reasonable procedures designed to ensure that (1) periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A), and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

Under the proposal, the existing language in comment 2(a)(15)–3 (which would be redesignated as proposed comment 2(a)(15)–3.i) would be revised to be consistent with new proposed comment 2(a)(15)–3.ii and the definition of ''charge card.'' Currently, the first sentence of comment 2(a)(15)–3 provides that generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. This sentence would be revised to be more consistent with the definition of charge card in § 1026.2(15)(iii) to state that charge cards are credit cards where no periodic rate is used to compute the finance charge; no substantive change is intended by this proposed revision. The Bureau notes that while most charge cards are structured such that the outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received, this is not a requirement in order for a card to meet the definition of charge card in § 1026.2(a)(15)(iii). In addition, the last sentence of the existing comment would be revised to cross reference new proposed comment 2(a)(15)–3.ii. The Bureau seeks comment on this proposed approach to charge cards.

2(a)(15)(iv) Debit Card, 2(a)(15)(v) Prepaid Card, and 2(a)(15)(vi) Prepaid Account

Although Regulation Z and its commentary use the term ''debit card,'' that term is not defined. Generally, under the existing regulation, this term refers to a card that accesses an asset account. *See* comment 2(a)(15)–2.i.B. Specifically, comment 2(a)(15)–2.i.B provides as an example of a credit card: ''A card that accesses both a credit and an asset account (that is, a debit-credit card).'' In addition, comment 2(a)(15)–2.ii.A provides that the term credit card does not include a debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

As discussed in the Overview of Regulation Z Proposal section, under the proposal, different rules generally would apply in Regulation Z depending on whether credit is accessed by a card or device that accesses a prepaid account (which would be defined in proposed § 1026.2(a)(15)(vi) to match the definition under proposed Regulation E § 1005.2(b)(3)) or one that accesses another type of asset account. To assist compliance with the regulation, the proposal would define ''debit card'' for purposes of Regulation Z in § 1026.2(a)(15)(iv) to mean ''any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.'' The proposed definition of ''debit card'' would specify that it does not include a prepaid card. Proposed § 1026.2(a)(15)(v) would define ''prepaid card'' to mean ''any card, code, or other device that can be used to access a prepaid account'' and would define ''prepaid account'' in proposed § 1026.2(a)(15)(vi) to mean a prepaid account as defined in Regulation E proposed § 1005.2(b)(3). Proposed comment 2(a)(15)–6 would provide that the term ''prepaid card'' in § 1026.2(a)(15)(v) includes any card, code or other device that can be used to access a prepaid account, including a prepaid account number or other code. The proposed comment provides that the phrase ''credit accessed by a prepaid card'' means any credit that is accessed by any card, code or other device that also can be used to access a prepaid account.

The term ''prepaid account'' as defined in proposed Regulation E 1005.2(b)(3) would not include gift cards, government benefit accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards. Under current Regulation Z and the proposal, these cards would not be credit cards unless they were subject to a written agreement to extend credit. Nonetheless, the Bureau solicits comment on whether gift cards, government benefit accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards should be included within the definition of ''prepaid accounts'' for purposes of Regulation Z, even if those accounts would not be considered prepaid accounts for purposes of error resolution, disclosure, and other purposes under Regulation E. By including these accounts into the definition of ''prepaid account'' for purposes of Regulation Z, such a card would be a ''prepaid card'' and the card would be a ''credit card'' if the card is a single device that may be used from time to time to access a credit plan, except if that card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments.[363] As a credit card, the person issuing the card would be a ''card issuer'' under Regulation Z. *See* § 1026.2(a)(7). In addition, the person issuing the card would be a ''creditor'' under Regulation Z if the person issuing the card extends the credit. *See* § 1026.2(a)(17)(iii) and (iv). The specific provisions of Regulation Z that the person would need to comply with as a ''card issuer'' and ''creditor'' would depend on the type of credit that is being extended and the type of fees being imposed. *See* § 1026.2(a)(17)(iii) and (iv).

The Bureau is unaware of any credit features currently associated with such cards. The Bureau solicits comment on current and potential credit features that may be offered on these types of cards, the nature of potential risks to consumers if credit features were offered on these types of cards, and incentives for the industry to offer credit features on these types of cards. The Bureau also solicits comment on any implications of treating these products as prepaid accounts under Regulation Z but not Regulation E.

2(a)(15)(vii) Account Numbers Where Extensions of Credit Are Permitted To Be Deposited Directly Only Into Particular Prepaid Accounts Specified by the Creditor

As noted above, the proposal covers credit plans that are not accessed directly by a prepaid card, but where a separate credit plan is accessed by an account number that is not a prepaid card that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor.

A credit plan would still be covered under the proposal where a consumer could access the credit plan by use of checks or in-person withdrawals, so long as the credit plan allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit into an asset account other than particular prepaid accounts specified by the creditor. *See* proposed comment 2(a)(15)–5. The proposal would provide that these credit plans would be credit card accounts under Regulation Z.

The Bureau believes that these types of credit plans could be offered as substitutes for overdraft credit plans accessed by a prepaid card, and if they were not covered, creditors would be able to avoid the consumer protections set forth in the proposal. Thus, the Bureau believes it is reasonable to include account numbers that access these types of credit products under the definition of credit card. Nonetheless, the Bureau is not attempting to cover general lines of credit where consumers generally are not restricted from depositing directly credit extensions taken under the plan into asset accounts of their choosing, including prepaid accounts. The Bureau believes that those types of credit plans are not acting as substitutes for overdraft credit plans because these general lines of credit are not designed to provide credit in relation to particular prepaid accounts. The Bureau solicits comment on this approach, and whether the proposal appropriately covers the types of credit plans that may act as substitutes for overdraft credit plans accessed by prepaid cards.

In referring to account numbers that access credit plans linked to prepaid accounts, the proposal uses the term ''account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.'' Proposed § 1026.2(a)(15)(vii) defines this term to mean an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. As noted above, these account numbers would be credit cards under the proposal. *See* proposed § 1026.2(a)(15)(vii), comments 2(a)(15)–2.i.G and –5.

2(a)(17) Creditor

Certain disclosure requirements and other requirements in TILA and Regulation Z generally apply to creditors. Under TILA section 103(g), the term ''creditor'' generally is defined to mean ''a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer

[363] Conforming changes also might be needed under Regulation E if these cards became credit cards under Regulation Z.

credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement.'' 15 U.S.C. 1602(g). Also, for purposes of certain disclosure provisions in TILA that relate to credit card account-opening disclosures and periodic statement disclosures, the term ''creditor'' includes a ''card issuer[] whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required.'' 15 U.S.C. 1602(g).

Consistent with TILA, under Regulation Z, the term ''creditor'' is defined generally in § 1026.2(a)(17)(i) to include 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.'' Under § 1026.2(a)(17)(v) and comment 2(a)(17)–4, for open-end credit, a person regularly extends consumer credit if it had more than 25 accounts outstanding in the preceding calendar year. If a person did not meet this numerical standard in the preceding calendar year, the numerical standards must be applied to the current calendar year. In addition, under § 1026.2(a)(17)(iii) and (iv), the term ''creditor'' includes a card issuer (which is a person that issues a credit card or its agent) that extends credit. For purposes of subpart B, a person also is a ''creditor'' if the person is a card issuer that extends credit that is not subject to a finance charge and is not payable by written agreement in more than four installments. *See* § 1026.2(a)(17)(iii). Thus, under Regulation Z as generally structured, card issuers that only meet this narrow definition of creditor (*i.e.,* extend credit that is not subject to a finance charge and is not payable in more than four installments) generally are subject to the open-end (not home-secured) rules and the credit card rules in subpart B but generally need not comply with the credit card rules in subpart G, except for the credit card disclosures required by § 1026.60.

Except as described below, the Bureau's proposal generally would apply this existing framework to the prepaid context. Thus, a card issuer that extends open-end credit would meet the general definition of ''creditor'' because the person charges a finance charge and would be subject to the rules governing open-end (not home-secured) credit plans in subpart B and the credit card rules set forth in subparts B and G. A card issuer that extends closed-end credit, and meets the general definition of ''creditor'' because the person charges a finance charge or extends credit payable by written agreement in more than four installments generally would be subject to the closed-end provisions in subpart C and certain open-end disclosure (not home-secured) rules and the credit card rules in subpart B. *See* § 1026.2(a)(17)(iv).

With respect to account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, card issuers that meet only the special definition of ''creditor'' because they extend credit accessed by the account number where the credit is not subject to a finance charge and is not payable by written agreement in more than four installments would generally be subject to the rules governing open-end (not home-secured) credit plans in subpart B and the credit card rules set forth in subpart B, but not the rules implementing the Credit CARD Act, generally set forth in subpart G. Although a credit plan accessed by such an account number would not be open-end credit because it is not subject to a finance charge, the person generally would be subject to the provisions in subpart B even if the credit is not subject to any fees, including finance charges. *See* § 1026.2(a)(17)(iii).

However, the Bureau is clarifying in proposed comment 2(a)(17)(iii)–2 that § 1026.2(a)(17)(iii) does not apply to a person that is extending credit that is accessed by a prepaid card where the credit (1) is not subject to a finance charge, (2) is not subject to fees described in § 1026.4(c), and (3) is not payable by written agreement in more than four installments. As discussed in the section-by-section analysis of § 1026.2(a)(15)(i), in this case, the prepaid card is not a credit card and therefore the person issuing the card is not a card issuer. Prepaid card issuers that satisfy this exclusion would still be subject to Regulation E's requirements, such as error resolution, and limits on liability for unauthorized use.

Proposed comment 2(a)(17)(iii)–2 would specify that a person is not a creditor where a prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments.

The Bureau notes, however, that with respect to a credit plan that is accessed by a prepaid card, the person would be a card issuer if the prepaid card accesses a credit plan that is subject to a fee that is not a finance charge that is described in § 1026.4(c), such as a fee for applying for a credit plan, a late payment fee, an over-the-limit fee, or a returned payment fee. In this case, the person would not be extending open-end credit because the credit is not subject to a finance charge. Nonetheless, the person would be a card issuer under § 1026.2(a)(7) and would be a creditor under § 1026.2(a)(17)(iii). As a result, the person would be required to comply generally with the rules governing open-end (not home-secured) credit plans in subpart B and the credit card rules set forth in subpart B, but not the rules implementing the Credit CARD Act, generally set forth in subpart G.

2(a)(20) Open-End Credit

Under TILA section 103(j), the term ''open-end credit plan'' is defined to mean a ''plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance.'' *See* 15 U.S.C. 1602(j). Under Regulation Z, the term ''open-end credit'' is defined in § 1026.2(a)(20) to mean consumer ''credit'' extended by a ''creditor'' under a ''plan'' in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a ''finance charge'' from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. Thus, to have open-end credit under Regulation Z, there must be (1) consumer ''credit;'' (2) that is extended under a ''plan;'' (3) where the person extending the credit may impose a ''finance charge'' from time to time on an outstanding unpaid balance; (4) the person extending the credit is a ''creditor;'' (5) the person extending credit reasonably contemplates repeated transactions; and (6) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

As discussed above in the Overview of Regulation Z Proposal section, with narrow exceptions discussed below, the Bureau anticipates that most credit accessed by a prepaid card will

constitute credit extended under a ''credit plan'' and will meet the definition of ''open-end credit'' if the creditor offering the plan may impose a finance charge for the credit. Likewise, the Bureau anticipates that most credit that is deposited into a prepaid account where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor will constitute credit extended under a ''credit plan'' and will meet the definition of ''open-end credit'' if the creditor offering the plan may impose a finance charge for the credit.

The proposal would provide additional guidance on the meaning of three terms used in the definition of ''open-end credit:'' (1) ''credit;'' (2) ''plan;'' and (3) ''finance charge.'' For a discussion of the proposed revisions related to the term ''credit,'' see the section-by-section analysis of proposed § 1026.2(a)(14) above. The term ''plan'' is discussed below. The term ''finance charge'' is discussed below and in the section-by-section analysis of § 1026.4.

Plan

The term ''plan'' currently is discussed in comment 2(a)(20)–2, which provides in relevant part that the term ''plan'' connotes a contractual arrangement between the creditor and the consumer. For the reasons described in the Overview of Regulation Z Proposal section, the proposal would revise comment 2(a)(20)–2 to provide additional guidance on what constitutes a plan with respect to credit extended through paying overdrafts in connection with prepaid accounts. A new comment 2(a)(20)–2.ii would be added that would provide that with respect to credit accessed by a prepaid card, a plan would mean a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely pays transactions when a consumer has insufficient or unavailable funds in a prepaid account and the consumer is obligated contractually to repay those transactions. Under the proposal, such a program constitutes a plan notwithstanding that the creditor retains discretion not to pay such transactions, the creditor does not pay transactions once the consumer has exceeded a certain amount of credit, or the creditor only pays transactions where there were sufficient or available funds to cover the amount of the transaction at the time the transaction was authorized but not sufficient or available funds to cover the amount of the transaction at the time the transaction is paid.

In addition, for the reasons discussed in the Overview of Regulation Z Proposal section, a similar new proposed comment 2(a)(20)–2.iii would be added to provide guidance on when depositing credit proceeds into a prepaid account would be considered extending credit under a plan. In particular, this proposed comment would provide that with respect to credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely will extend credit that is deposited directly into particular prepaid accounts specified by the creditor and the consumer is obligated contractually to repay the credit. Such a program constitutes a plan notwithstanding that the creditor retains discretion not to extend credit, or the creditor does not extend credit once the consumer has exceeded a certain amount of credit. For example, a program constitutes a plan where a creditor will routinely extend credit that is deposited directly into a particular prepaid account specified by the creditor when the consumer requests an extension because the consumer does not have adequate funds in the prepaid account to cover the full amount of a transaction using the prepaid card.

As discussed in more detail in the Overview of Regulation Z Proposal section, with respect to the programs described above, the Bureau believes these programs are plans notwithstanding that the person offering the program reserves the right not to extend credit on individual transactions. The Bureau believes that the person's reservation of such discretion in connection with credit extended with respect to prepaid accounts does not connote the absence of an open-end credit plan. Consumers using overdraft programs, or linked lines of credit, in connection with prepaid accounts must agree to repay the debt created by an overdraft or advance, indicating that a contractual arrangement between the creditor and the consumer exists. The Bureau notes that credit card issuers similarly reserve the right to reject individual transactions, and thus the Bureau believes that automated overdrafts services are comparable.

To accommodate the proposed changes, the proposal also would make several technical revisions to comment 2(a)(20)–2. Specifically, the first sentence of the existing language in comment 2(a)(20)–2 would be moved to proposed comment 20(a)(20)–2.i, and the remaining language of the existing comment would be moved to proposed comment 2(a)(20)–2.iv.

Finance Charge Imposed From Time to Time on an Outstanding Unpaid Balance

In Regulation Z, credit will not meet the definition of ''open-end credit'' unless the person extending the credit may impose a ''finance charge'' from time to time on an outstanding unpaid balance. Comment 2(a)(20)–4 provides that the requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. This comment also provides that a plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. The term ''finance charge'' generally is defined in § 1026.4 to mean ''the cost of consumer credit as a dollar amount'' and it includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. The term does not include any charge of a type payable in a comparable cash transaction.

The proposal would add 2(a)(20)–4.ii to note that with respect to credit accessed by a prepaid card (including a prepaid card that is solely an account number) or credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, any service, transaction, activity, or carrying charges imposed on a credit account, and any such charges imposed on a prepaid account if that charge is related to an extension of credit, carrying a credit balance, or credit availability, generally would be a finance charge. *See* § 1026.4(a), (b)(2), (c)(3) and (4) and comments 4(a)–4 and 4(b)(2)–1. In addition, proposed comment 2(a)(20)–4.ii would provide that with respect to that credit, such service, transaction, activity or carrying charges would constitute finance charges imposed from time to time on an outstanding unpaid balance if there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated.

The Bureau does not anticipate that there will be a specific amount financed for credit plans accessed by prepaid cards, or credit plans that are linked to prepaid accounts and accessed by account numbers as discussed above, at the time the credit plan is established. Instead, the Bureau anticipates that the credit lines on these credit plans generally will be replenishing. In such cases, an amount financed for the plan could not be calculated because the creditor will not know at the time the plan is established the amount of credit that will be extended under the plan. Thus, to the extent that any finance charge may be imposed on such credit plans, the credit plan will meet this criterion.

As discussed in the section-by-section analysis of § 1026.4, the Bureau is proposing to expand the types of fees that would be finance charges for purposes of credit linked to prepaid accounts. Currently, certain fees or charges are specifically excluded from the term ''finance charge,'' such as (1) charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (2) fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. *See* § 1026.4(c)(3) and (4). The proposal would amend § 1026.4 and its commentary that relates to the definition of ''finance charge'' to provide that these two exceptions do not apply to credit accessed by a prepaid card or an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In addition, the proposal would make additional amendments to § 1026.4 and related commentary related to credit accessed by a prepaid card or credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. For such credit, any service, transaction, activity, or carrying charges imposed on the credit account, and any such charges imposed on a prepaid account if that charge is related to an extension of credit, carrying a credit balance, or credit availability, generally would be a finance charge. *See* § 1026.4(a), (b)(2), (c)(3) and (4) and comments 4(a)–4 and 4(b)(2)–1. Such charges would include periodic participation fees for the credit plan, and transaction charges imposed in connection with a credit extension.

As a result of the proposal to expand the definition of finance charge for credit linked to prepaid accounts, the Bureau believes that charge card accounts accessed by prepaid cards or account numbers as discussed above would be open-end credit when transaction fees, participation fees, or other finance charges may be imposed on the account. If the Bureau were to read the criterion of open-end credit that a finance charge may be imposed time to time on an outstanding unpaid balance narrowly, there is a chance that some types of charge card accounts offered in connection with prepaid accounts would constitute closed-end credit. A person offering such a charge card account would be required to comply with the closed-end provisions in subpart C as well as certain open-end (not home-secured) rules and the credit card rules in subpart B. *See* § 1026.2(a)(17)(iv). The Bureau believes that receiving closed-end disclosures for these types of accounts would be confusing to consumers, because the disclosures would be different from their other credit card accounts. Where the transactions otherwise would seem to fit an open-end plan based on repeated transactions and replenishing credit, the Bureau believes that consumers would be better protected and better informed if such transactions were treated as open-end plans in the same way as their other credit card accounts. In addition, with respect to credit accessed by prepaid cards, the Bureau believes that complying with the closed-end credit rules would be difficult for card issuers (for example, at point of sale) because closed-end disclosures specific to each credit extension would need to be provided prior to each transaction. Thus, the Bureau proposes to retain the current interpretation of the finance charge criterion for the term ''open-end credit'' which would result in most charge card accounts meeting the definition of ''open-end credit'' if a transaction fee, participation fee or other finance charge may be imposed on the credit plan. The Bureau solicits comment on this approach.

The Bureau also notes that persons that offer charge card accounts where no finance charge is imposed may still be subject to certain Regulation Z provisions. *See* the section-by-section analysis of § 1026.2(a)(17).

As a technical revision, the proposal would move the existing language of comment 2(a)(20)–4 to proposed comment 20(a)(20)–4.i.

Section 1026.4 Finance Charge

Under TILA section 106(a), the term ''finance charge'' generally provides that ''the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit.'' The finance charge does not include charges of a type payable in a comparable cash transaction. 15 U.S.C. 1605(a).

Under Regulation Z, the term ''finance charge'' generally is defined in § 1026.4(a) to mean ''the cost of consumer credit as a dollar amount.'' It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction. However, certain fee or charges are specifically excluded from the current definition of ''finance charge,'' including (1) charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (2) fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. *See* § 1026.4(c)(3) and (4).

The proposal would amend § 1026.4 and its commentary that relates to the definition of ''finance charge'' in two ways. First, it would provide that the exception regarding overdrafts would not apply to credit accessed by a prepaid card or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, as discussed further below and in the Overview of Regulation Z Proposal section. Second, it would provide that the second exception regarding participation fees does not apply to credit accessed by prepaid card or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The proposal also would make certain other additional amendments to § 1026.4 and related commentary related to credit accessed by a prepaid card or credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor to clarify which types of charges are finance charges and which are not. As discussed below, this

portion of the proposal is designed to ensure proposed protections for prepaid accounts.

4(a) Definition

Under Regulation Z, the term ''finance charge'' generally is defined in § 1026.4(a) to mean ''the cost of consumer credit as a dollar amount.'' It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction. Comment 4(a)–4 provides guidance on when transaction charges imposed on credit card accounts are finance charges under § 1026.4(a). (Transaction charges that are imposed on checking accounts or other transaction accounts are discussed in the section-by-section analysis of § 1026.4(b).)

Specifically, comment 4(a)–4 provides that any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example, any charge imposed on a credit cardholder by a card issuer for the use of an ATM to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. In addition, any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States with a foreign merchant, or in a foreign currency, is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. This comment essentially provides that debit card transactions are not considered ''comparable cash transactions'' to credit card transactions with respect to transaction charges imposed by a card issuer on a credit cardholder when those fees are imposed on the credit card account.

In the supplemental information accompanying the rule that adopted this comment, the Board noted the inherent complexity of seeking to distinguish transactions that are ''comparable cash transactions'' to credit card transactions from transactions that are not.[364] For example, the Board discussed the situation of a transaction fee imposed by a card issuer on the credit card account for a cash advance through an ATM. A transaction fee for a cash advance through an ATM would not always be a finance charge if the ''comparable cash transaction'' exception considered fees that are imposed on debit cards offered by the credit card issuer in determining whether a transaction fee for a cash advance through an ATM imposed on the credit account is a finance charge. Instead, whether this fee is a finance charge would depend on whether the credit card issuer provides asset accounts and offers debit cards on those accounts and whether the fee exceeds the fee imposed for a cash advance transaction through an ATM on the asset account. The Board believed this type of distinction is not helpful for consumers in understanding transaction fees that are imposed on credit card accounts. Thus, the Board adopted comment 4(a)–4, which provides that any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. The Board noted that it was not revising comment 4(b)(2)–1, which states that if a checking or transaction account charge imposed on an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge. The Board further noted that comment 4(b)(2)–1 addresses different situations as comment 4(a)–1, as discussed below in the section-by-section analysis of § 1026.4(b)(2).

The Bureau proposes to add two new examples to this comment to provide guidance on how this comment applies to prepaid cards that are credit cards and to account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In particular, proposed comment 4(a)–4.iii would provide that any transaction charge imposed on a cardholder by a card issuer for credit accessed by a prepaid card that also is a credit card is a finance charge regardless of whether the card issuer imposes the same, greater or lesser charge on the withdrawal of funds from a prepaid account. For example, assume a prepaid card issuer charges $15 for each transaction accessing credit with a prepaid card. This $15 fee would be a finance charge regardless of whether the prepaid card issuer charges the same, greater or lesser fee to the consumer to access funds in the prepaid account using the prepaid card.

In addition, proposed comment 4(a)–4.iv would provide that any transaction charge imposed on a cardholder by a card issuer for credit accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor is a finance charge regardless of whether the card issuer imposes the same, greater or lesser charge on the withdrawal of funds from a prepaid account. For example, assume a card issuer charges a $15 fee each time a consumer uses an account number to access credit that is deposited into a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. This $15 fee is a finance charge regardless of whether the card issuer charges the same, greater or lesser fee to the consumer to access funds in the prepaid account using a prepaid card.

4(b) Examples of Finance Charges

4(b)(2)

Section 1026.4(b) provides examples of the types of charges that are finance charges, except if those charges are specifically excluded under § 1026.4(c) through (e). In particular, § 1026.4(b)(2) provides that examples of finance charges generally include service, transaction, activity, and carrying charges. However, the Board added a partial exception to this example stating that for any charge imposed on a checking or other transaction account, such service or transaction account charge is only a finance charge to the extent that the charge exceeds the charge for a similar account without a credit feature. Comment 4(b)(2)–1 similarly provides that a checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 1026.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for a checking or transaction account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 1026.4(b)(2).[365]

[364] 74 FR 5244, 5263 (Jan. 29, 2009).

[365] To illustrate: A $5 service charge is imposed on a checking or transaction account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 1026.4(c)(4)). As another example, assume a $5 service charge is imposed for each item that results in an overdraft on a checking or transaction account with an

Continued

The Bureau believes that the Board adopted this partial exception to exclude certain overdraft lines of credit from coverage under Regulation Z. As discussed in the Overview of Regulation Z Proposal section, overdraft lines of credit where a financial institution agrees in writing to pay overdrafts and impose a fee generally would be subject to Regulation Z if the financial institution is imposing a finance charge. Nonetheless, under § 1026.4(b)(2), a person would not be imposing a finance charge on an overdraft line of credit if the fee for the overdraft is imposed on the checking or transaction account and does not exceed the amount of the fee that is imposed on the checking or transaction account if the financial institution returns the item unpaid (NSF fee) or does not exceed the amount of the fee the financial institution would impose if a courtesy overdraft service applied to the account instead of an overdraft line of credit. The Bureau believes that the Board adopted this partial exception as an expansion of the ''comparable cash transaction'' exception to the definition of ''finance charge,'' which excludes charges imposed uniformly in cash and credit transactions from the definition of ''finance charge.'' *See* § 1026.4(a) and comment 4(a)–1; *see also* 15 U.S.C. 1605(a).

For the reasons discussed in the Overview of Regulation Z Proposal section, the Bureau proposes not to extend this partial exclusion to credit extended in connection with a prepaid account. The proposal would add proposed § 1026.4(b)(2)(ii), and proposed comment 4(b)(2)–1.ii through .iv, to clarify that prepaid accounts are not subject to this partial exception from the definition of finance charge. Specifically, the proposed language would provide that any charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability is a finance charge where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card or accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, regardless of whether the creditor imposes the same, greater or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended.

To illustrate, assume a $15 transaction charge is imposed on the prepaid account each time a consumer uses a prepaid card or an account number described above to access an open-end credit plan. The $15 charge is a finance charge regardless of whether the creditor imposes the same, greater or lesser charge to withdraw funds from the prepaid account. As another example, assume a $1.50 transaction charge is imposed on the prepaid account for each transaction that is made with the prepaid card, including when the prepaid card is used to access credit where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization or at the time the transaction is paid. The $1.50 transaction charge is a finance charge when the prepaid card accesses credit, notwithstanding that a $1.50 transaction charge also is imposed on transactions that solely access funds in the prepaid account. As a third example, assume a $5 monthly service charge is imposed on the prepaid account for the availability of an open-end plan that is accessed by a prepaid card or an account number described above. The $5 monthly service charge is a finance charge regardless of whether the creditor imposes the same, greater or lesser monthly service charge to hold the prepaid account.

Proposed comment 4(b)(2)–1.iii would provide that examples of charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability include (1) transaction fees for credit extensions; (2) fees for transferring funds from a credit account to a prepaid account; (3) a daily, weekly, or monthly (or other periodic) fee assessed each period a prepaid account is in ''overdraft'' status, or would be in overdraft status but for funds supplied by a linked line of credit; (4) a daily, weekly, or monthly (or other periodic) fee assessed each period a line of credit accessed by a prepaid card or account number described in § 1026.4(b)(2)(ii) has an outstanding balance; and (5) participation fees or other fees that the consumer is required to pay for the issuance or availability of credit.

Proposed comment 4(b)(2)–1.iv would provide that proposed § 1026.4(b)(2)(ii) would not apply to transaction fees imposed on the prepaid account that are imposed only on transactions that solely access funds in the prepaid account (and are not imposed on transactions that either are funded in whole or in part from credit), fees for opening or holding the prepaid account, and other fees, such as cash reload fees and balance inquiry fees, that are not imposed on the prepaid account because the consumer engaged in a transaction that is funded in whole or in part by credit, for holding a credit plan, or for carrying a credit balance. These fees would not be considered charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability even if there are not sufficient funds in the prepaid account to pay the fees at the time they are imposed on the prepaid account. Nonetheless, any negative balance on the prepaid account, whether from fees or other transactions would be a credit extension and if a fee is imposed for such credit extension, the fee would be a finance charge under § 1026.4(b)(2)(ii). For example, if a cash-reload fee is imposed on the prepaid account, there are not sufficient funds in the prepaid account to pay the fee at the time it is imposed on the prepaid account, and an additional charge is imposed on the prepaid account for this credit extension, the additional charge would be a transaction charge imposed on a prepaid account in connection with an extension of credit and would be a finance charge under § 1026.4(b)(2)(ii).

The Bureau believes that this approach is most reasonable and consistent with the general definition of finance charge because where a prepaid account lacks sufficient funds to pay a transaction completely, a transaction fee imposed in the course of processing the transaction with credit funds is payable directly or indirectly by the consumer as an incident to or condition of the extension of credit. That is why comment 4(a)–4 for credit card transactions covers transaction charges, regardless of whether the issuer imposes the same, greater, or lesser charges on withdrawals on funds from an asset account.

As discussed above, the Bureau believes that the Board based the partial exemption in § 1026.4(b)(2) on the comparable cash transaction exception, which excludes charges imposed uniformly in cash and credit transactions from the definition of ''finance charge.'' The Bureau believes that the Board expanded this exception in connection with asset accounts to include situations where a consumer is using a cash-like product, such as a debit card that is accessing an asset account. The Bureau further believes that it is reasonable not to expand the comparable cash transaction exception in connection with prepaid accounts, for the reasons discussed below. In retail transactions, the comparable cash

overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature. The $5 charge is not a finance charge.

transaction to which the credit transaction is compared could only include retail transactions where the goods or services are paid for with ''cash'' as opposed to being paid for by a check or a prepaid card that accesses funds in a checking or transaction account. When a consumer pays for goods or services with ''cash,'' the consumer does not pay these fees. Therefore, the Bureau believes that the ''comparable cash'' exception is reasonably interpreted not to apply to these types of fees that are imposed on prepaid accounts with respect to credit extended in connection with prepaid accounts, as described above. First, the Bureau believes that the best approach with respect to credit extended in connection with prepaid accounts is to provide a clear line about which fees that are imposed on the prepaid account are finance charges, rather than basing that decision on the fees that a prepaid card issuer charges to access the funds in the prepaid account or to hold the account. Otherwise, the same type of fee, such as a transaction or service charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability will not always be a finance charge for each prepaid account, but instead would depend on the other fees that are charged on that particular prepaid account. This may make it more difficult for compliance purposes to determine whether a fee is a finance charge.

The Bureau also believes that it is necessary to include in the definition of finance charge fees that are imposed on the prepaid account if those fees are in connection with an extension of credit, for carrying a credit balance, or for credit availability. Otherwise, a person could avoid the protections set forth in the proposal by charging fees for credit on the prepaid account rather than on the credit account. The Bureau believes that the proposed approach will ease compliance and make it easier for consumers to compare total costs of accessing credit.

The proposal would cause issuers who are trying to fit within certain exceptions to the regime to waive certain transaction fees in connection with overdraft transactions. For example, if a financial institution wants to take advantage of the exception from Regulation Z where a credit plan is accessed by a prepaid card and the credit plan only allows extension of credit that are not subject to a finance charge or fees subject to § 1026.4(c) and are not payable by written agreement in more than four installments, the financial institution would need to waive transaction fees where the transaction is funded in whole or in part by credit. For example, assume a $1.50 transaction charge is imposed on the prepaid account for each transaction that is made with the prepaid card, including when the prepaid card is used to access credit where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization or at the time the transaction is paid. The $1.50 transaction charge is a finance charge when the prepaid card accesses credit, notwithstanding that a $1.50 transaction charge also is imposed on transactions that solely access funds in the prepaid account. In this case, the prepaid card issuer would need to waive the $1.50 transaction charge on any transaction that accesses credit. Otherwise, the $1.50 transaction fee charged for a transaction that accesses credit would be a finance charge. The Bureau believes that the cost imposed in waiving fees would be outweighed by benefits to consumers in understanding the costs of credit transactions.

The Bureau believes the best approach is to treat such fees consistent with the provision in comment 4(a)–4 for transaction fees imposed on credit card accounts. This means that fees that are imposed to access the funds in a prepaid account or to hold the prepaid account are not relevant in deciding whether transaction or service charges imposed on a prepaid account for credit are ''finance charges'' under § 1026.4(a). However, the Bureau seeks comment on this approach and its benefit and costs for consumers, industry, and alternative approaches if any.

For the reasons discussed in the Overview of Regulation Z Proposal section, to preserve the existing rules so that they remain applicable to other types of credit, the Bureau proposes to move the existing rule to § 1026.4(b)(2)(i) and move the existing language in comment 4(b)(2)–1 to proposed comment 4(b)(2)–1.i.

4(c)

Section 1026.4(c) provides a list of certain charges that are excluded from the definition of finance charge under § 1026.4. The charges listed in § 1026.4(c) include (1) Application fees charged to all applicants for credit, whether or not credit is actually extended; (2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence; (3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. As discussed in more detail below, the proposal would provide that the following charges are not excluded from the definition of finance charge in connection with credit accessed by prepaid card, or credit accessed by account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor: (1) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (2) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

4(c)(3)

Section 1026.4(c)(3) provides that the term ''finance charge'' does not include charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. As discussed above in the Overview of Regulation Z Proposal section, the Board developed this exception to the term ''finance charge'' in order to carve out fees imposed by financial institutions for checks or other items that overdraw an account so that ad hoc overdraft plans would not be subject to Regulation Z. As discussed in the Overview of Regulation Z Proposal section, the Bureau intends generally that, under its proposal, Regulation Z will apply to credit accessed by prepaid cards or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, the Bureau proposes to revise § 1026.4(c)(3) to specify that this provision does not apply to credit accessed by a prepaid card or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. As a result, charges imposed by a financial institution for paying items that overdraw a prepaid account will be finance charges even if the payment of the item and the imposition of the charge were not previously agreed upon in writing, and the financial institution extending the credit represented by the overdraft will be a creditor.

4(c)(4)

Section 1026.4(c)(4) provides that the term ''finance charge'' does not include fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. Comment 4(c)(4)–1 explains that the participation fees described in § 1026.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

The Bureau proposes to amend § 1026.4(c)(4) to provide that this exception does not apply to credit accessed by a prepaid card or to credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The Bureau believes that this exception is not dictated by TILA's definition of ''finance charge.'' Rather, the Board added this exception to § 1026.4(c)(4) in 1981 based on an interpretation letter that the Board has previously issued.[366] In the interpretation letter, the Board excluded annual fees for membership in a credit plan from the definition of ''finance charge'' because these fees are not imposed incident or as a condition to any specific extension of credit.[367] Nonetheless, the Bureau believes that the term ''finance charge'' in TILA is broad enough to reasonably include periodic fees for participation in a credit plan under which a consumer may obtain credit because those fees would be ''incident to the extension of credit.'' Without paying the periodic fees for access to the credit plan, the consumer could not use the credit plan to access credit.

As discussed in the Overview of Regulation Z Proposal section, the Bureau intends generally to cover credit accessed by a prepaid card, or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, as ''open-end credit'' under Regulation Z. The Bureau believes these credit plans should be ''open-end credit'' even if the only fees charged for the plan are annual or other periodic fees for participation in the credit plan. See the section-by-section analysis of § 1026.2(a)(20) for a discussion of the finance charge criterion for the definition of ''open-end credit.'' The Bureau believes that annual or other periodic fees that are charged for participation in credit plans linked to prepaid accounts (as discussed above) could be significant costs to consumers, even if interest or transaction fees are not charged with respect to the plan, and thus the protections in Regulation Z that apply to open-end credit, including those in subpart G, should apply to credit plans linked to prepaid accounts as discussed above that charge an annual or other periodic fee to access the plan and otherwise meet the definition of ''open-end credit.''

The Bureau especially believes that the protections in Regulation Z subpart G that generally apply to open-end credit that is accessed by a credit card would be beneficial to consumers for such credit plans. For example, § 1026.51 prohibits credit card issuers from extending credit without assessing the consumer's ability to pay, with special rules regarding the extension of credit to persons under the age of 21. In addition, § 1026.52(a) restricts the amount of fees (including annual or other periodic fees to access the plan) that an issuer can charge during the first year after an account is opened, such that the fees generally cannot exceed 25 percent of the initial credit limit. These provisions would provide important protections to consumers to help ensure that consumers accessing credit plans linked to prepaid accounts as discussed above where only annual or other periodic fees are imposed do not become overextended in using credit, and that the periodic fees imposed during the first year generally do not exceed more than 25 percent of the initial credit line. Thus, the Bureau would revise § 1026.4(c)(4) and comment 4(c)(4)–1 to provide that the exception for participation fees from the definition of ''finance charge'' does not apply to credit accessed by a prepaid card or to credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

Subpart B

The provisions in subpart B generally apply to a ''creditor'' as defined in § 1026.17 that is extending ''open-end credit'' as defined in § 1026.2(a)(20). They also generally apply to card issuers that are extending credit. *See* § 1026.2(a)(17)(iii) and (iv). These provisions generally require that account-opening disclosures and periodic statement disclosures be provided, as well as set forth rules for the treatment of payments and credit balances, and procedures for resolving credit billing errors. While most of the provisions in subpart B apply generally to open-end credit, as described below, some of the provisions only apply to a ''credit card account under an open-end (not home-secured) consumer credit plan,'' as that term is defined in § 1026.2(a)(15)(ii). In addition, subpart B also sets forth, in § 1026.12, provisions applicable to credit card transactions; those provisions generally apply to a ''card issuer'' as defined in § 1026.2(a)(7).

As discussed above in the Overview of Regulation Z Proposal section, the Bureau anticipates that most credit accessed by a prepaid card, or accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, will meet the definition of ''open-end credit'' if the creditor may impose a finance charge. See the section-by-section analysis of the definition of ''credit'' in § 1026.2(a)(14), the definition of ''open-end-credit'' in proposed § 1026.2(a)(20), and the definition of ''finance charge'' in § 1026.4.

In addition, as discussed above in the section-by-section analysis of § 1026.2(a)(7), (a)(15)(i) and (a)(15)(ii), an open-end credit plan accessed by a prepaid card that is a credit card, or by an account number that is a credit card where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, would be a ''credit card account under an open-end (not home-secured) consumer credit plan'' and the person issuing the prepaid card or account number would be a ''card issuer.'' For a discussion of card issuers that would still be subject to certain provisions in subpart B if they are extending credit that is not ''open-end credit,'' see the section-by-section analysis of § 1026.2(a)(17).

As discussed below, the proposal would revise subpart B to provide guidance on how certain provisions in subpart B apply to open-end credit plans or credit card accounts that are accessed by a prepaid card (such as overdraft credit) or to open-end credit plans or credit card accounts where extensions of credit are deposited into a prepaid account where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

[366] 46 FR 20848, 20855 (Apr. 7, 1981).

[367] 36 FR 16050 (Aug. 19, 1971).

Specifically, the proposal would provide additional guidance regarding: (1) Disclosure requirements applicable to periodic statements in § 1026.5, 1026.7 and 1026.8; (2) treatment of payment requirements as set forth in § 1026.10; and (3) billing error procedures in § 1026.13.

The proposal also would revise certain provisions that apply to credit card transactions in § 1026.12 to provide guidance on how those provisions apply to credit card transactions that are made using a prepaid card that is a credit card or using an account number that is a credit card where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, the proposal would provide additional guidance on: (1) Unsolicited issuance in § 1026.12(a); (2) the right of a cardholder to assert claims or defenses against a card issuer in § 1026.12(c); and (3) the prohibition on offsets by a card issuer in § 1026.12(d). In addition, the proposal would add a new § 1026.12(h) that would impose a new requirement on card issuers that offer prepaid cards that are credit cards or account numbers that are credit cards where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Under proposed § 1026.12(h), these card issuers would be prevented from opening a credit card account for, or providing a solicitation or application to open a credit or charge card account to, a consumer who holds a prepaid card until at least 30 days after the consumer has registered the prepaid account.

Section 1026.5 General Disclosure Requirements

5(b) Time of Disclosures

5(b)(2) Periodic Statements

5(b)(2)(ii) Timing Requirements

TILA sections 127(b) and 163, which are implemented in § 1026.5(b)(2), set forth the timing requirements for providing periodic statements for open-end credit accounts and credit card accounts. 15 U.S.C. 1637(b) and 1666b. Section 1026.5(b)(2)(i) provides that a creditor that extends open-end credit or credit accessed by a credit card account generally is required to provide a periodic statement as required by § 1026.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. Section 1026.5(b)(2)(ii)(A) provides that for credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that:

(1) Periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A); and

(2) The card issuer does not treat as late for any purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment. See the section-by-section analysis of § 1026.2(a)(15)(ii) for a discussion of the term ''credit card accounts under an open-end (not home-secured) consumer credit plan.''

TILA sections 127(b)(12) and (o), which are implemented in § 1026.7(b)(11)(i)(A), set forth requirements related to the disclosure of payment due dates on periodic statements in the case of a credit card account under an open-end consumer credit plan. 15 U.S.C 1637(b)(12), (o). Section 1026.7(b)(11)(i)(A) provides that for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide on each periodic statement the due date for a payment. The due date disclosed must be the same day of the month for each billing cycle.

Although TILA sections 127(b)(12) and (o) do not, on their face, exclude charge card accounts that are accessing open-end credit, the Board in implementing these provisions, as explained in comment 5(b)(2)(ii)–4.i, determined that the payment due date requirement in § 1026.7(b)(11)(i)(A) does not apply to periodic statements provided solely for charge card accounts. *See* § 1026.7(b)(11)(ii)(A). Thus, the requirement in § 1026.5(b)(2)(ii)(A)(*1*) to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement does not apply to charge card accounts. In the supplemental information to the final rule adopting the exclusion for charge cards from the due date disclosure requirement, the Board noted that charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable when the periodic statement is received.[368] Therefore, the contractual payment due date for a charge card account is the date on which the consumer receives the periodic statement (although charge card issuers generally request that the consumer make payment by some later date). If the due date disclosure requirement and the 21-day rule for delivery of periodic statements applied to charge card account, the card issuer could no longer require payment upon delivery of the statement. Thus, the Board concluded that it would not be appropriate to apply the payment due date disclosure in § 1026.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts.

As discussed in more detail in the section-by-section analysis of § 1026.7(b)(11), the proposal would provide that the due date disclosure set forth in § 1026.7(b)(11)(A) does apply to periodic statements provided solely for charge card accounts where the charge card account is accessed by a charge card that is a prepaid card; or where the charge card account is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. *See* proposed § 1026.7(b)(11)(ii)(A). Thus, as a technical revision, comment 5(b)(2)(ii)–4.i would be revised to reflect the proposed changes to § 1026.7(b)(11) that the due date requirement does apply to charge card accounts accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The Bureau is not proposing to adjust the payment due date requirement in § 1026.7(b)(11)(i)(A) for charge cards that are neither prepaid cards nor account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

As discussed in more detail in the section-by-section analysis of §§ 1026.7(b)(11) and 12(d)(3), the Bureau believes that it is important to provide strong protections to prepaid accountholders to ensure that they can control when and if funds are swept from their accounts to repay previous overdrafts. In particular, the Bureau believes that for all credit card accounts under an open-end (not home-secured) consumer credit plan, including charge card accounts, accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the card issuer should be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement

[368] 75 FR 7658 at 7672–7673, Feb. 22, 2010.

pursuant to § 1026.7(b)(11)(i)(A). As discussed in more detail in the section-by-section analysis of proposed § 1026.7(b)(11) and 12(d), the Bureau believes that this requirement, along with proposed changes to the offset prohibition in § 1026.12(d), will ensure that the due date of the credit card account is not so closely aligned with the timing of when funds are deposited into the prepaid account that card issuers can circumvent TILA's offset prohibition.

Section 1026.7 Periodic Statement

7(b) Rules Affecting Open-End (not Home-Secured) Plans

TILA section 127(b), implemented in § 1026.7, identifies information about an open-end account or credit card account that must be disclosed when a creditor is required to provide periodic statements. 15 U.S.C. 1637(b). Section 1026.7(b) sets forth the content requirements for periodic statements given with respect to open-end (not home-secured) plans or credit card accounts that are not home secured. Generally, under § 1026.7(b), such periodic statements must include, among other things, information about (1) the amount of the balance outstanding at the beginning of the billing cycle; (2) any credit to the account during the billing cycle, such as payments; (3) any credit transactions that occurred during a billing cycle described in accordance with § 1026.8; (4) the annual percentage rates (APRs) that may be used to compute interest charges during the billing cycle; (5) the amount of the balance to which an APR was applied and an explanation of how that balance was determined; (6) the amount of interest charges that was incurred during the billing cycle, itemized by type of transaction, as well as the total interest charges that were imposed during the billing cycle and year to date; (7) the amount of each fee that was incurred during the billing cycle, itemized by type, as well as the total fee charges that were imposed during the billing cycle and year to date; (8) the date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges; (9) the closing date of the billing cycle and the account balance outstanding on that date; and (10) the due date for a payment with respect to a credit card account under an open-end (not home-secured) consumer credit plan.

As discussed in the section-by-section analysis of proposed § 1026.7(b)(11), the proposal would amend the due date disclosure requirements in § 1026.7(b)(11) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by a prepaid card, or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. See the section-by-section analysis of § 1026.2(a)(15)(ii) for a discussion of the term ''credit card account under an open-end (not home-secured) consumer credit plan.''

The periodic statement requirements in § 1026.7(b) generally would apply to open-end plans or credit card accounts that are accessed by a prepaid card, or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The Bureau notes that under Regulation E, periodic statements would separately be required under § 1005.9(b) to disclose non-credit transactions on the prepaid account, but that proposed § 1005.18(c) would create an exception. Specifically, proposed § 1005.18(c) would permit the financial institution to make available to the consumer (1) the consumer's account balance, through a readily available telephone line; (ii) an electronic history of the consumer's account transactions, such as through a Web site, that covers at least 18 months preceding the date the consumer electronically accesses the account; and (iii) a written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 18 months preceding the date the financial institution receives the consumer's request.

If a financial institution elects to provide a periodic statement under Regulation E § 1005.9(b) to a holder of the prepaid account and a periodic statement is required under Regulation Z § 1026.7, the financial institution may combine the two periodic statements, so long as the requirements of both Regulation E and Regulation Z are met in providing the combined statement. If a financial institution instead elects to provide account access pursuant to Regulation E proposed § 1005.18(c), the financial institution must also provide periodic statements pursuant to Regulation Z § 1026.7. The financial institution may provide the Regulation Z periodic statements in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). *See* § 1026.5(a)(1)(iii).

As discussed in the section-by-section analysis of §§ 1026.8 and 1026.13(i), the Bureau recognizes that with respect to transactions made with a prepaid card that accesses an overdraft credit plan, a single transaction may involve both a withdrawal of funds from the prepaid account and a credit extension. For example, assume that a cardholder makes a $50 purchase with the prepaid card but only has $20 in funds in the prepaid account. The transaction would involve both a withdrawal of $20 from the prepaid account and an extension of credit of $30. For these types of transactions, the Bureau recognizes that the part of the transaction that accesses the prepaid funds will be shown on the periodic statement or account history under Regulation E and the part of the transaction that accesses credit will be shown as a credit transaction on the Regulation Z periodic statement. The Bureau solicits comment on whether this situation currently presents itself in relation to transactions on overdraft lines of credit accessed by debit cards and if so, how creditors typically disclose these transactions on periodic statements under Regulation E and Z. The Bureau also solicits comment on whether, for these types of transactions, the Bureau should consider a disclosure that would appear on the Regulation Z periodic statement that would notify consumers when a particular transaction is funded partially through the prepaid account and partially funded through credit so that consumers would know to look at the Regulation E periodic statement or account history for additional information related to that transaction.

7(b)(11) Due Date; Late Payment Costs

TILA sections 127(b)(12) and (o), which are implemented in § 1026.7(b)(11)(i), set forth requirements related to the disclosure of payment due dates on periodic statements in the case of a credit card account under an open-end consumer credit plan. 15 U.S.C. 1637(b)(12), (o). Under § 1026.7(b)(11)(i), for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer generally must provide on each periodic statement: (1) The due date for a payment and the due date disclosed must be the same day of the month for each billing cycle; and (2) The amount of any late payment fee and any increased periodic rate(s) (expressed as an APR(s)) that may be imposed on the account as a result of a late payment. Section 1026.7(b)(11)(ii) provides, however, that the requirements of § 1026.(b)(11)(i) do not apply to the following: (1) Periodic statements

provided solely for charge card accounts; and (2) Periodic statements provided for a charged-off account where payment of the entire account balance is due immediately.

As also noted in the section-by-section analysis of proposed § 1026.5(b)(2)(ii), although TILA sections 127(b)(12) and (o) do not, on their face, exclude charge card accounts that are accessing open-end credit from the requirement to disclose the due date on each periodic statement, the Board in implementing these provisions determined that the payment due date requirement in § 1026.7(b)(11)(i)(A) does not apply to periodic statements provided solely for charge card accounts. *See* § 1026.7(b)(11)(ii)(A). In the supplemental information to the final rule adopting the exclusion for charge cards from the due date disclosure requirement, the Board noted that charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable when the periodic statement is received.[369] Therefore, the contractual payment due date for a charge card account is the date on which the consumer receives the periodic statement (although charge card issuers generally request that the consumer make payment by some later date). If the due date disclosure requirement and the 21-day rule for delivery of periodic statements applied to charge card accounts, the card issuer could no longer require payment upon delivery of the statement. Thus, the Board concluded that it would not be appropriate to apply the payment due date disclosure in § 1026.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts.

The proposal would amend § 1026.7(b)(11)(ii)(A) to provide that the due date disclosure does apply to periodic statements provided solely for charge card accounts where the charge card account is accessed by a charge card that is a prepaid card; or where the charge card account is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, the due date disclosure in § 1026.7(b)(11)(i)(A) would apply to periodic statements provided for a credit card account under an open-end (not home-secured) consumer credit plan, including a charge card account, where the account is accessed by a charge card that is a prepaid card; or where the charge card account is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

As discussed in more detail in the section-by-section analysis of §§ 1026.5(b)(2)(ii) and 12(d)(3), the Bureau believes that it is important to provide strong protections to prepaid accountholders to ensure that they can control when and if funds are swept from their accounts to repay previous overdrafts. In particular, as discussed in the section-by-section analysis of proposed § 1026.5(b)(2)(ii), by requiring the due date in these instances, the card issuer would be required under § 1026.5(b)(2)(ii)(A) to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A). As discussed in more detail in the section-by-section analysis of proposed § 1026.12(d), the Bureau believes that this proposed requirement, along with proposed changes to the timing requirement for a periodic statement in § 1026.5(b)(2)(ii), the offset prohibition in § 1026.12(d) and the compulsory-use provisions in Regulation E (proposed § 1005.10(e)(1)), would allow consumers to retain control over the funds in their prepaid accounts even when a credit card feature becomes associated with that account, which is consistent with the prohibition on offsets.

The Bureau believes that this proposed requirement, the proposed requirement in § 1026.5(b)(2)(ii) and the proposed changes to the offset prohibition in § 1026.12(d), will ensure that the due date of the credit card account is not so closely aligned with the timing of when funds are deposited into the prepaid account that card issuers can circumvent the offset prohibition. As discussed in more detail in the section-by-section analysis of proposed § 1026.12(d)(3), the Bureau is concerned that, with respect to credit card accounts that are accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only in particular prepaid accounts specified by the creditor, some card issuers may attempt to circumvent the prohibition on offsets by specifying that each transaction on the credit card account linked to the prepaid account (as described above) is due on the date on which funds are subsequently deposited into the account, and obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt when deposits are received into the prepaid account to help ensure that the debt is repaid. The Bureau believes that card issuers that offer credit card accounts linked to a prepaid account may rely significantly on obtaining a consumer's written authorization of daily or weekly debits to the prepaid account to repay the credit card debt given the overall creditworthiness of prepaid accountholders. The Bureau also believes that card issuers that offer credit card accounts linked to a prepaid account may be able to obtain a consumer's written authorization to debit the prepaid account for the credit card debt more easily than for other types of credit card accounts because consumers may believe that, in order to obtain credit, they have no alternative but to provide written authorization to allow a card issuer to deduct all or part of the cardholder's credit card debt from the linked prepaid account.

The proposed revisions to § 1026.7(b)(11), along with the proposed changes to § 1026.5(b)(2)(ii), to the § 1026.12(d) offset prohibition and to the compulsory-use provisions in Regulation E (proposed § 1005.10(e)(1)), would mean, respectively, that with respect to credit card accounts related to prepaid accounts as discussed above, card issuers (1) would be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle; (2) could move funds automatically from the asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date, (pursuant to the consumer's signed, written agreement that the issuer may do so), and (3) would be required to offer consumers a means to repay their outstanding credit balances other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking Web site following a cash reload to the asset account).

Section 1026.8 Identifying Transactions on Periodic Statements

TILA section 127(b)(2) requires creditors to identify on periodic statements credit extensions that occurred during a billing cycle. 15 U.S.C. 1637(b)(2). The statute calls for the Bureau to implement requirements that are sufficient to identify the

[369] 75 FR 7658 at 7672–7673, Feb. 22, 2010.

transaction or to relate the credit extension to sales vouchers or similar instruments previously furnished.

Section 1026.8 sets forth the requirements for how issuers must describe each credit transaction on the periodic statement. Section 1026.8 generally provides that a creditor must identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing certain information. Section 1026.8(a) sets forth the requirements for describing a ''sale credit'' transaction on the periodic statement. A ''sale credit'' generally means a credit transaction involving the sale of property or services. Section 1026.8(b) sets forth the requirements for describing a ''nonsale credit'' transaction on the periodic statement. A ''nonsale credit'' transaction generally means a credit transaction that does not involve the sale of property or services.

The proposal would provide guidance on how creditors may comply with the requirements in §§ 1026.8(a) and (b) with respect to open-end credit plans or credit card accounts accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

8(a) Sale Credit

Section 1026.8(a) provides that for each credit transaction involving the sale of property or services, the creditor generally must disclose the amount and date of the transaction, and either: (i) A brief identification of the property or services purchased, for creditors and sellers that are the same or related; or (ii) The seller's name; and the city and state or foreign country where the transaction took place. The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in the consumer's home; or was a mail, Internet, or telephone order. Comment 8(a)–1 provides that the term ''sale credit'' refers to a purchase in which the consumer uses a credit card, or otherwise directly accesses an open-end line of credit to obtain goods or services from a merchant, whether or not the merchant is the card issuer or creditor. Thus, under comment 8(a)–1, sale credit would include credit transactions where a prepaid card that is a credit card is used to obtain goods or services from a merchant.

Comment 8(a)–2 provides guidance on how to disclose the amount of the credit transaction if sale transactions are not billed in full on any single statement. The proposal would move the existing language of comment 8(a)–2 to proposed comment 8(a)–2.i. The proposal also would add comment 8(a)–2.ii to provide guidance on how to disclose the amount of the credit transaction for purposes of certain prepaid transactions. First, it would explain that the term ''sale credit'' includes a purchase in which the consumer uses a prepaid card that is a credit card to obtain goods or services from a merchant and the transaction is wholly or partially funded by credit, regardless of whether the merchant is the card issuer or creditor. Proposed comment 8(a)–2.ii also would provide that if a prepaid card that is a credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer's prepaid account, and partially funded by credit, the amount to be disclosed under § 1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction. Because § 1026.7(b)(2) requires that credit transactions be disclosed on periodic statements in accordance with § 1026.8, the Bureau believes it is appropriate to only consider the credit portion of the transaction as ''sale credit'' that would be disclosed on the Regulation Z periodic statement. Under the Regulation E proposal, as discussed in the section-by-section analysis of Regulation E proposed § 1005.18(c), the amount of the transaction that is funded from the prepaid account would be disclosed either on the Regulation E periodic statement if the financial institution elects to provide one under Regulation E proposed § 1005.18(c)(1), or alternatively, on the electronic history of the consumer's prepaid account transactions, such as through a Web site, that covers at least 18 months preceding the date the consumer electronically accesses the account under Regulation E proposed § 1005.18(c)(1)(ii). For a discussion of issues related to disclosures of these transactions on periodic statements under Regulation Z and E, see the section-by-section analysis of § 1026.7(b).

The Bureau recognizes that for purchases of goods or services that involve overdrafts on asset accounts that are executed via debit cards, the credit transaction may be disclosed as nonsale credit. In particular, comment 8(b)–1.iii provides that nonsale credit includes the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services. In a 1981 rulemaking implementing the Truth in Lending Simplification and Reform Act, the Board indicated that several commenters asked the Board to clarify whether a creditor should identify a transaction as sale or nonsale credit when a consumer uses a debit card with an overdraft feature to purchase goods, and in doing so, activates the overdraft. The Board expressed its belief that the credit portions of such transactions could be viewed as cash advances, and therefore permitted them to be disclosed as nonsale credit at the creditor's option even though a purchase is involved.[370] As discussed in the Overview of Regulation Z Proposal section, the Bureau is not intending to revise rules in Regulation Z that apply to overdraft plans accessed by debit cards. Nonetheless, for credit plans accessed by prepaid cards that are credit cards, the Bureau believes that disclosing the credit transaction as sale credit would be more helpful to consumers than disclosing the transaction as nonsale credit because the consumer would receive the seller's name, and the city and state or foreign country where the transaction took place. If the credit transaction were treated as a nonsale credit, the consumer would not receive the information about the seller's name and address. The Bureau believes that the information about the seller's name and address may be useful to consumers in identifying the credit transactions where a prepaid card that is a credit card is used to obtain goods or services from a merchant. The Bureau also notes that under Regulation E, on the periodic statement, or the alternative account history, a transaction that involves a withdrawal from the prepaid account at point of sale must include the merchant's name and location. See Regulation E § 1005.9(b)(1)(iv) and (v) and proposed § 1005.18(c)(2). Thus, with respect to a single transaction that involves both a withdrawal from the prepaid account and an extension of credit, disclosing such credit transaction as a sale credit when the prepaid card accesses credit at point of sale also could help consumers match up the part of the transaction that appears on the Regulation Z periodic statement with the part of the transaction that appears on the Regulation E periodic statement or account history.

Comment 8(a)–2.ii also would set forth guidance on how to disclose a transaction at point of sale where credit is accessed by a prepaid card that is a credit card, and that transaction partially involves the purchase of goods or services and partially involves other credit such as cash back given to the

[370] 46 FR 20848, 20861 (Apr. 7, 1981).

cardholder. In this situation, new proposed comment 8(b)–1.vi provides that the creditor must disclose the amount of credit as ''sale credit'' under § 1026.8(a), including the portion of the transaction that involves credit that is not for a purchase of goods or services. The Bureau understands that creditors may not be able to identify the amount of the credit transaction the relates to the purchase of goods or services at a merchant and the amount of the credit transaction that relates to other types of credit, such as cash back given to the cardholder. In this case, the card issuer may only be able to determine the total amount of credit extended for that transaction. To ensure that consumers are more able to recognize credit transactions disclosed on periodic statements, the proposal would require a creditor to disclose the entire amount of the credit transaction as ''sale credit'' under § 1026.8(a). When using this proposed approach, a creditor would disclose the entire amount of the credit transaction, the date of the transaction, the seller's name, and the city and state or foreign country where the transaction took place. The Bureau believes such information would be sufficient to allow a consumer to identify a transaction, even where part of the amount of the transaction was for cash back or other forms of credit given to the cardholder at point of sale. For these types of transactions, the Bureau anticipates that the cardholder will associate the entire credit transaction, including the cash back portion of the credit, with the seller's name. The Bureau solicits comment on this approach.

8(b) Nonsale Credit

Section 1026.8(b) provides that for each credit transaction not involving the sale of property or services, the creditor generally must disclose a brief identification of the transaction; the amount of the transaction; and at least one of the following dates: (1) The date of the transaction; (2) the date the transaction was debited to the consumer's account; or (3) if the consumer signed the credit document, the date appearing on the document. Comment 8(b)–1 provides that the term ''nonsale credit'' refers to any form of loan credit including, for example: (1) A cash advance; (2) an advance on a credit plan that is accessed by overdrafts on a checking account; (3) the use of a ''supplemental credit device'' in the form of a check or draft or the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services; and (4) miscellaneous debits to remedy mispostings, returned checks, and similar entries.

The proposal would add two additional examples to comment 8(b)–1 to provide guidance on when credit transactions are ''nonsale credit'' when credit is accessed by a prepaid card. First, new proposed comment 8(b)–1.v would explain that ''nonsale credit'' includes an advance at an ATM on a credit plan that is accessed by a prepaid card that is a credit card. This proposed comment also would clarify that if a prepaid card that is a credit card is used to obtain an advance at an ATM and the transaction is partially funded by the consumer's prepaid account, and partially funded by a credit extension, the amount to be disclosed under § 1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

The proposal would also add a new comment 8(b)–1.vi to explain that ''nonsale credit' includes an advance on a credit plan accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. This example is designed to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor; (2) the consumer requests an advance on the account using an account number; and (3) the advance is deposited into the prepaid account. In this situation, the advance taken on the line of credit would be ''nonsale credit'' even if the consumer subsequently uses the deposited funds to purchase goods or services at a merchant. This provision would not apply to open-end credit or a credit card account that is accessed directly by a prepaid card. As discussed above, the ''sale credit'' rules in § 1026.8(a) would apply where a prepaid card accesses credit to obtain goods or services from a merchant.

The proposal also would make technical revisions to two comments—comment 8(b)–1.ii and comment 8(b)–2—which provide guidance regarding overdraft credit plans in order to make clear that these comments do not apply to overdraft credit plans related to a prepaid accounts.

Section 1026.10 Payments

10(a) General Rule

TILA section 164(a), which is implemented in § 1026.10(a), provides that payments received from an obligor under an open-end consumer credit plan or a credit card account by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Bureau. 15 U.S.C. 1666c. Section 1026.10(a) generally provides that a creditor for open-end credit or a credit card account shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in § 1026.10(b). Comment 10(a)–2 provides guidance on the term ''date of receipt'' as used in § 1026.10(a). Specifically, comment 10(a)–2 provides that the ''date of receipt'' is the date that the payment instrument or other means of completing the payment reaches the creditor. Comment 10(a)–2.ii provides an example illustrating when the date of receipt is for payments related to payroll deduction plans. Specifically, comment 10(a)–2.ii provides that in a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

The proposal would amend this comment to reference proposed changes that would be added to § 1026.12(d) related to the prohibition on offsets. As discussed in more detail in the section-by-section analysis of § 1026.12(d), § 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Nonetheless, § 1026.12(d)(3) provides that the prohibition on offsets does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 1026.13(d)(1)). With respect to credit cards that are also prepaid cards or credit cards that are also account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the proposal would add § 1026.12(d)(3)(ii) to define ''periodically'' to mean no more frequently than once per calendar month. Thus, under proposed § 1026.12(d)(3), with respect to such

credit card accounts linked to a prepaid account, a card issuer may deduct automatically all or a part of the cardholder's credit card debt from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so.

The proposal would revise comment 10(a)–2.ii to explain that § 1026.12(d)(3)(ii) prevents card issuers, with respect to credit card accounts accessed by prepaid cards that are credit cards or for account numbers that are credit cards where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, from automatically deducting credit card account payments from a prepaid account or other deposit account held by the card issuer more frequently than once per calendar month. In a payroll deduction plan in which funds are deposited to a prepaid account held by the creditor, and from which payments are made on a monthly basis to a credit card account accessed by a prepaid card that is a credit card, or by account numbers that are credit cards where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, payment is received on the date when it is debited to the prepaid account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

Section 1026.12 Special Credit Card Provisions

Section 1026.12 contains special rules applicable to credit cards and credit card accounts, including conditions under which a credit card may be issued, liability of cardholders for unauthorized use, cardholder rights to assert merchant claims and defenses against the card issuer, and the prohibition on offsets by issuers.

The proposal would revise certain provisions that apply to credit card transactions in § 1026.12 to provide guidance on how those provisions apply to credit card transactions that are made using a prepaid card that is a credit card, or using an account number that is a credit card where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, the proposal would provide additional guidance on: (1) Unsolicited issuance in § 1026.12(a); (2) the right of a cardholder to assert claims or defenses against a card issuer in § 1026.12(c); and (3) the prohibition on offsets by a card issuer in § 1026.12(d).

In addition, the proposal would add a new provision to § 1026.12(h) that would impose a new requirement on card issuers that offer prepaid cards that are credit cards, or account numbers that are credit cards where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Under proposed § 1026.12(h), these card issuers would be prevented from opening a credit card account for, or providing a solicitation or application to open a credit or charge card account to, a consumer who holds a prepaid card until at least 30 calendar days after the consumer has registered the prepaid account.

12(a) Issuance of Credit Cards

TILA section 132, which is implemented by § 1026.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. 15 U.S.C. 1642.

Section 1026.12(a) provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) In response to an oral or written request or application for the card; or (2) As a renewal of, or substitute for, an accepted credit card. The proposal would provide guidance on how the prohibition on issuing unsolicited credit cards applies to prepaid cards that are credit cards, and account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

12(a)(1)

Addition of a Credit Feature

Under current § 1026.12(a), a prepaid card cannot access automatically a credit card feature at the time the card is purchased by the consumer at point of sale. A card issuer could add a credit card feature to a prepaid card only in response to a consumer's explicit request or application.

Comment 12(a)(1)–2 would be modified specifically to explain that the addition of a credit card feature to an existing prepaid card constitutes ''issuance'' for purposes of unsolicited issuance under § 1026.12(a). Specifically, the existing comment 12(a)(1)–2 provides that if the consumer has a non-credit card, the addition of credit features to the card (for example, the granting of overdraft privileges on a checking account when the consumer already has a check guarantee card) constitutes issuance of a credit card. The proposal would revise comment 12(a)(1)–2 to provide guidance relating to prepaid cards. Specifically, proposed comment 12(a)(1)–2 would provide that if the consumer has a non-credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. The proposal also adds an example related to prepaid cards. Specifically, the proposal would add proposed comment 12(a)(1)–2.ii to provide that allowing a prepaid card to access a credit plan that would make the card into a credit card under § 1026.2(a)(15)(i) would constitute issuance of a credit card. The existing example relating to check guarantee cards would be moved to proposed comment 12(a)(1)–2.i.

In addition, as discussed in more detail in the section-by-section analysis of proposed § 1026.12(h), the Bureau is proposing to require a card issuer to wait at least 30 calendar days after the prepaid account has been registered before the card issuer may open a credit card account for the holder of the prepaid account, or provide a solicitation or an application to the holder of the prepaid account to open a credit or charge card account, that will be accessed by the prepaid card.

Issuance of a Non-Credit Card

Comment 12(a)(1)–7.i explains that a non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan.[371] The comment notes that a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request. Comment 12(a)(1)–7.ii provides as an example, that a purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. The comment further explains that an issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 1026.6. The comment also states that the issuer

[371] The Bureau notes that a prepaid card would be an access device under Regulation E, as that term is defined in Regulation E § 1005.2(a)(1), and would be subject to the issuance rules set forth in Regulation E § 1005.5 when it is issued.

violates the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

Under the proposal, the current language of comment 12(a)(1)–7.i and .ii would be moved to proposed comment 12(a)(1)–7.i.A and .B respectively and would be limited to the issuance of non-credit cards that are not prepaid cards. The proposal also would add a new comment 12(a)(1)–7.ii to provide guidance on when the issuance of a prepaid card would be viewed as the issuance of a credit card. The proposal would add proposed comment 12(a)(1)–7.ii to provide that § 1026.12(a)(1) would not apply to the issuance of a prepaid card where an issuer does not connect the card to any credit plan that would make the prepaid card into a credit card at the time the card is issued and only opens a credit card account, or provides an application or solicitation, to open a credit or charge card account, that would be accessed by that card in compliance with proposed § 1026.12(h). As discussed in more detail in the section-by-section analysis of proposed § 1026.12(h), the Bureau is proposing to require a card issuer to wait at least 30 calendar days after the prepaid account has been registered before the card issuer may open a credit card account for the holder of the prepaid account, or provide a solicitation or an application to the holder of the prepaid account, to open a credit or charge card account that will be accessed by the prepaid card. Proposed comment 12(a)(1)–7.ii also would explain that a credit feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with § 1026.12(h).

Proposed comment 12(a)(1)–7.ii further explains, however, that an issuer does not connect a prepaid card to a credit plan that would make the card into a credit card simply by providing the disclosures required by Regulation E § 1005.18(b)(2)(i)(B)(*9*) and 18(b)(2)(ii)(B) with the prepaid card. As discussed above under the Regulation E section-by-section analysis of proposed § 1005.18(b), a financial institution would be required to provide certain disclosures about credit card accounts that may be offered in connection with prepaid accounts. As discussed in more detail in the section-by-section analysis of Regulation E § 1005.18(b), a financial institution would be required to disclose in the short and long form disclosures provided in connection with the prepaid card information about any credit plan that may be offered at any point to the holder of the prepaid account where the credit plan would be accessed by a credit card that also is a prepaid card, or the credit plan would be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor offering the plan. These disclosures would be provided to consumers so that they can shop more effectively for prepaid cards by informing them whether a credit card account may be offered in connection with the prepaid account and some of the terms of the credit card account that may be offered. The Bureau is proposing to provide guidance that providing these disclosures does not violate the rule against unsolicited issuance of a credit card because, otherwise, the inclusion of these required disclosures with the prepaid card would make it a violation of Regulation Z to sell such cards in retail locations or otherwise provide them on an unsolicited basis to consumers. The Bureau notes that the issuance rules set forth in Regulation E § 1005.5 would apply to the issuance of a prepaid card that does not access a credit card account when issued.

The proposal also would make two technical revisions to comment 12(a)(1)–7. First, the current language of comment 12(a)(1)–7.i and .ii would be moved to proposed comment 12(a)(1)–7.i.A and .B respectively. Second, the language in proposed comment 12(a)(1)–7.i also would be revised to indicate that it applies only to the issuance of non-credit cards other than prepaid cards.

12(a)(2)

Section 1026.12(a) provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) In response to an oral or written request or application for the card; or (2) As a renewal of, or substitute for, an accepted credit card. Comments 12(a)(2)–5 and –6 provide guidance on the exception to the unsolicited issuance rule when a card is issued as a renewal of, or substitute for, an accepted credit card.

Specifically, comment 12(a)(2)–5 (the so-called ''one for one'' rule) provides that an accepted card generally may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances. Comment 12(a)(2)–6 provides, however, two exceptions to this general ''one for one'' rule. First, comment 12(a)(2)–6.i provides that the unsolicited issuance rule in § 1026.12(a) does not prohibit the card issuer from replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E. Comment 12(a)(2)–6.ii also provides that § 1026.12(a) does not prohibit a card issuer from replacing an accepted card with more than one renewal or substitute card, provided that (1) no replacement card accesses any account not accessed by the accepted card; (2) for terms and conditions required to be disclosed in account-opening disclosures under § 1026.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 1026.9(c); and (3) under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

Under the proposal, the example in existing comment 12(a)(2)–6.ii would be moved to proposed comment 12(a)(2)–6.iii. The proposal also would add new proposed comment 12(a)(2)–6.ii to explain that the one-for-one rule would not prevent an issuer from replacing a single card that is both a prepaid card and a credit card with a credit card and a separate prepaid card where the latter card is not a credit card. The Bureau notes that the issuance rules set forth in Regulation E § 1005.5 would apply to the issuance of a prepaid card that does not access a credit card account when issued. For example, the one-for-one rule would not prevent a card issuer from replacing a prepaid card that is a credit card (for example, where the prepaid card accesses an overdraft feature) with a prepaid card that is not a credit card (where the prepaid card does not access an overdraft feature) and an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

In addition, the proposal would also make two technical revisions to comment 12(a)(2)–6. First, the example in comment 12(a)(2)–6.i related to debit cards would be revised for clarity; no substantive changes are intended. In addition, the example in existing comment 12(a)(2)–6.ii would be moved to proposed comment 12(a)(2)–6.iii.

12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer

Under TILA section 170, as implemented in § 1026.12(c) of Regulation Z, a cardholder may assert against the card issuer a claim or defense for disputes as to goods or services purchased in a consumer credit transaction with a credit card. The claim or defense applies only as to unpaid balances for the goods or services and any finance or other charges imposed on that amount, if the merchant honoring the card fails to resolve the dispute. The right is further limited generally to disputes exceeding $50 for purchases made in the consumer's home state or within 100 miles of the cardholder's address. *See* 15 U.S.C. 1666i. The proposal would revise commentary to § 1026.12(c) to provide guidance on how this provisions applies to prepaid cards that are credit cards, or account numbers that are credit cards where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

Comment 12(c)(1)–1 and comment 12(c)–3 provides guidance on the types of transactions that are covered by § 1026.12(c) and the types of transactions that are not covered. Comment 12(c)(1)–1 provides that the consumer may assert claims or defenses only when the goods or services are ''purchased with the credit card.'' This could include mail, Internet or telephone orders, if the purchase is charged to the credit card account. The proposal would amend this comment and add proposed comment 12(c)–5 to explain that § 1026.12(c) would apply when goods or services are purchased by a consumer using credit accessed by a credit card that also is a prepaid card.

The Bureau notes that the provisions in 1026.12(c) generally do not apply to purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. *See* comments 12(c)–3 and 12(c)(1)–1.iv. In addition, comment 12(c)(1)–1.ii also provides that the provisions in § 1026.12(c) do not apply to the purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to the credit extended on the overdraft line. The Board adopted these exceptions in 1981 as part of implementing the Truth in Lending Simplification and Reform Act.[372] In the supplemental information provided with that rulemaking, the Board indicated that it had decided to exempt check guarantee cards and debit cards when used to draw on an overdraft line because of serious operational problems cited by commenters as arising from applying the claims and defenses provisions to check guarantee and debit card transactions.

The Bureau proposes not to exempt from the provisions of § 1026.12(c) purchases made with prepaid cards that are credit cards, including when the prepaid cards are used to draw on overdraft credit plans. For the reasons set forth in the Overview of Regulation Z Proposal section, the Bureau believes that prepaid cards that are credit cards generally should be subject to the provisions in Regulation Z that apply to credit cards. The Bureau solicits comment, however, on what, if any, operational issues might arise from applying the protections in § 1026.12(c) to overdraft credit plans that are accessed by prepaid cards.

Proposed comment 12(c)–5 also would provide guidance on how § 1026.12(c) applies to transactions at point of sale where a prepaid card that is a credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer's prepaid account, and partially funded by credit. Proposed comment 12(c)–5.ii provides that the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of § 1026.12(c), and provides that the amount of the transaction funded from the prepaid account would not be subject to the requirements of § 1026.12(c). The Bureau notes that § 1026.12(c) applies only to disputes as to property or services purchased with a credit card in a consumer credit transaction. The portion of the transaction that is funded from the prepaid account would not be credit and thus, under the proposal, this amount of the transaction would not be subject to § 1026.12(c). The Bureau solicits comment on what operational issues, if any, might arise as a result of applying § 1026.12(c) to transactions that are partially funded from the prepaid account and partially funded with credit.

Comment 12(c)(1)–1.i through .iv provides examples of transactions that are not covered by the provisions in § 1026.12(c). Comment 12(c)(1)–1.i provides that § 1026.12(c) does not apply to the use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. The comment explains that such a transaction would not involve ''property or services purchased with the credit card.''

The proposal would revise comment 12(c)(1)–1.i to clarify that § 1026.12(c) does not apply to an advance on a credit plan accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. This example is designed to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the account using an account number other than a prepaid card, and (3) the advance is deposited into the prepaid account. In this situation, the advance taken on the line of credit would not be a transaction covered by § 1026.12(c) even if the consumer subsequently uses the deposited funds to purchase goods or services at a merchant. This proposed provision would not apply to open-end credit or a credit card account that is directly accessed by a prepaid card. As discussed above, the provisions in § 1026.12(c) would apply where a prepaid card that is a credit card accesses credit to obtain goods or services from a merchant.

For the reasons discussed in the Overview of Regulation Z Proposal section, the proposal would retain the exemptions from the provisions from § 1026.12(c) for purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans that are currently contained in comments 12(c)–3 and 12(c)(1)–1.ii and iv. The proposal, however, would revise the example in comment 12(c)(1)–1.ii to specify that the comment does not apply to overdraft plans that are accessed by a prepaid card.

12(d) Offsets by Card Issuer Prohibited

TILA section 169 generally prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the card issuer. Nonetheless, a card issuer would not violate this provision if the card issuer periodically deducts all or a portion of a consumer's credit card debt from the consumer's deposit account, if the periodic deductions are in

[372] 46 FR 20848, 20865 (Apr. 7, 1981); *see also* 46 FR 50288, 50313 (Oct. 9, 1981).

accordance with a preauthorized written authorization by the consumer and the card issuer does not deduct payment for any portion of the outstanding balance that is in dispute. 15 U.S.C. 1666h(a). This TILA section also provides that the prohibition described above does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally. 15 U.S.C. 1666h(b). TILA section 169 is implemented by § 1026.12(d).

Section 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Section 1026.12(d)(2) provides that the prohibition on offsets in § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds. Section 1026.12(d)(3) provides that the prohibition on offsets set forth in § 1026.12(d)(1) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 1026.13(d)(1)).

The offset provision in TILA section 169 was added to TILA as part of the Fair Credit Billing Act.[373] In adding this offset provision, Congress was concerned that

> Funds in these accounts can be attached without any recourse to the courts and in spite of any valid legal defense the cardholder may have against the bank. Banks which issue cards and also have the cardholder's funds on deposit may thus obtain a unique leverage over the consumer. Other creditors would have to apply to a court before being permitted to attach funds in a borrowers' deposit account.[374]

As discussed in more detail below, the proposal would enhance the offset protections in § 1026.12(d) for credit card accounts linked to prepaid accounts to ensure that card issuers are not able to obtain unfair leverage over the consumer or over other creditors with respect to these accounts. First, the proposal would provide that with respect to credit card accounts linked to prepaid accounts, a card issuer would be permitted to deduct all or a part of the cardholder's credit card debt automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so. Second, the proposal would enhance the requirements that card issuers of credit card accounts linked to prepaid accounts must follow in order to obtain a security interest in a prepaid account.

Without these additional protections, the Bureau is concerned that given the overall creditworthiness of prepaid accountholders, some card issuers may attempt to circumvent the prohibition on offsets by obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt on a daily or weekly basis from the prepaid account to help ensure that the debt is repaid. Because the card issuer holds the prepaid account, the card issuer may know the patterns of when consumers are likely to be depositing funds into the prepaid accounts. These prepaid card issuers could take advantage of this knowledge to set up preauthorized withdrawals to correspond to when the consumer is likely to be depositing funds. In addition, the Bureau believes prepaid consumers may grant the authorization, or a security interest, more readily than other credit card holders because consumers may believe that they must provide written authorization, or a security interest, to allow a card issuer to deduct all or part of the cardholder's credit card debt from the linked prepaid account.

The Bureau believes that these proposed requirements, along with proposed changes to the timing requirement for a periodic statement in § 1026.5(b)(2)(ii), and the compulsory-use provisions in Regulation E (proposed § 1005.10(e)(1)), are reasonable interpretations that are necessary to fully effectuate the intent of these provisions and would allow consumers to retain control over the funds in their prepaid accounts even when a credit card feature becomes associated with that account, which is consistent with the prohibition on offsets.

In particular, with these proposed changes, such card issuers (1) would be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and to ensure that the due date that is disclosed on the periodic statement must be the same day of the month for each billing cycle; (2) could move funds automatically from the asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date (pursuant to the consumer's signed, written agreement that the issuer may do so); and (3) would be required to offer consumers a means to repay their outstanding credit balances other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking Web site).

12(d)(1) General Rule

Section 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. The proposal would add comment 12(d)–1 to make clear that for purposes of the prohibition on offsets in § 1026.12(d), funds of the cardholder held on deposit include funds in a consumer's prepaid account and the term deposit account includes a prepaid account.

Comment 12(d)(1)–2 provides that if the consumer tenders funds as a deposit (to a checking account, for example) held by the card issuer, the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account. The proposal would amend this comment to provide guidance on the tender of funds as a deposit to a prepaid account. Specifically, this comment would be revised to specify that if the card issuer receives funds designated for the consumer's prepaid account with the issuer, such as by means of an ACH deposit or cash reload, the card issuer may not automatically apply the funds to repay indebtedness on the consumer's credit card account.

12(d)(2) Rights of the Card Issuer Under Other Law

TILA section 169(a) generally prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the

[373] Public Law 93–495, 88 Stat. 1500.

[374] S. Rep. No. 93–278, at 9 (June 28, 1973).

card issuer. 15 U.S.C. 1666h(a). TILA section 169(b) provides, however, that the prohibition on offset does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally. 15 U.S.C. 1666h(b).

Implementing TILA section 169, § 1026.12(d)(2) provides that the prohibition on offsets in § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under state or Federal law to attach or otherwise levy upon the funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally. Section 1026.12(d)(2) also provides two additional methods for obtaining funds that the Board found were not prohibited by the prohibition on offsets in TILA section 169. Specifically, § 1026.12(d)(2) provides that the prohibition on offsets in § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under state or Federal law to obtain or enforce a consensual security interest in the funds or obtain or enforce a court order relating to the funds.

The Board adopted these additional two methods in 1981 as part of its rulemaking to implement the Truth in Lending Simplification and Reform Act.[375] In the supplemental information to that rulemaking, with respect to the method related to security interests, the Board stated its belief that TILA section 169 was not intended to apply to the granting of security interests in cardholders' deposit accounts. In addition, the Board imposed certain limitations on the use of security interests that it believed would prevent circumvention of the offset prohibition because (1) only consensual security interests are permitted, and thus the cardholder must affirmatively agree to grant the security interest; (2) the security interest can be enforced only through procedures by which other creditors could enforce their security interests in the same funds; and (3) any security interest granted to secure credit card indebtedness will be disclosed in the card issuer's initial disclosures to the cardholder. The Board considered but rejected limiting the amount of the security interest to a specified amount, reasoning that other third-party creditors are not required to do so. The Board believed that these requirements should eliminate the possibility of unfair surprise to consumers, and of unfair advantage for depository institutions over other creditors that Congress sought to avoid in enacting TILA section 169.[376]

Current comment 12(d)(2)–1 is intended to ensure that the security interest is consensual. Specifically, comment 12(d)(2)–1 provides that the security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in § 1026.12(d)(2). In addition, for a security interest to qualify for the exception under § 1026.12(d)(2) the following conditions must be met: (1) The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account; and (2) The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 1026.12(d)(2).

Comment 12(d)(2)–1.i provides that indicia of the consumer's awareness and intent to provide a security interest must include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent): (1) Separate signature or initials on the agreement indicating that a security interest is being given; (2) Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions; or (3) Reference to a specific amount of deposited funds or to a specific deposit account number.

The Bureau believes, however, that additional protections may be needed to ensure that consumers understand that they are giving a security interest when a credit card account is directly linked to a prepaid account through an overdraft feature or through a separate account where extensions of credit are permitted to be deposited directly only in particular prepaid accounts specified by the creditor. The Bureau believes that prepaid account issuers may have significant interest in securing credit card debt by means of the prepaid account. These credit cards will always be associated with this linked asset account, and prepaid card users who use the cards to obtain consumer credit are likely to have lower credit ratings than credit card users overall. Unlike traditional secured credit cards, these prepaid cards likely would not be marketed as secured credit cards and would not require consumers to establish a new separate account or to set aside specific funds. As a result, prepaid consumers are less likely than secured credit card users to understand that they are required to provide a security interest in the prepaid account in order to receive the credit card account, and have a need to be able to manage their prepaid accounts very carefully to cover both daily expenses and any overdraft repayments.

Thus, to prevent the security interest from becoming the functional equivalent to an offset, the proposal would set forth in proposed comment 12(d)(2)–1.iii the steps that card issuers must take in order for a consumer to show awareness and intent to grant a security interest in a prepaid account. Specifically, a card issuer would be required to meet all the following conditions: (1) In addition to being disclosed in the issuer's account-opening disclosures under § 1026.6, the security agreement must be provided to the consumer in a document separate from the prepaid account agreement and the credit card account agreement; (2) The separate document setting forth the security agreement must be signed by the consumer; (3) The separate document setting forth the security agreement must refer to the prepaid account number and to a specific amount of funds in the prepaid account in which the card issuer is taking a security interest and these two elements of the document must be separately signed or initialed by the consumer; and (4) The separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest and each of those conditions must be separately signed or initialed by the consumer.

The Bureau believes that all of the indicia in proposed comment 12(d)(2)–2.ii, including delineating a specific dollar amount as being subject to the security interest, will help to ensure that a security interest arrangement does not circumvent the offset provision in TILA section 169 by ensuring that consumers focus careful attention on the consequences of granting the security interest so that consumers are better prepared to manage their accounts to both cover daily expenses and repay any credit extensions. The Bureau solicits comment on this approach. The Bureau also solicits comment on whether the

[375] 46 FR 20848 (Apr. 7, 1981).

[376] 46 FR 20848, 20866 (Apr. 7, 1981).

Bureau should engage in consumer testing of disclosures that describe security interests in connection with prepaid accounts to develop model language or model forms for presenting this information.

The Bureau also solicits comment on whether these additional protections are sufficient to ensure that security interests do not become the functional equivalent to an offset when a credit card account is directly linked to a prepaid account through an overdraft feature or through a separate account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. If these additional protections are not sufficient, the Bureau seeks comment on what additional protections would be sufficient to ensure that the security interests taken in prepaid accounts are consensual. Alternatively, the Bureau seeks comment on whether it should prohibit a card issuer from obtaining or enforcing any consensual security interest in the funds of a cardholder held in a prepaid account with the card issuer, to ensure that card issuers cannot circumvent the prohibition on offsets by taking routinely a security interest in the prepaid account funds without consumers being aware that the security interest is being taken.

For security interests related to other types of deposit accounts, the proposal would retain the current guidance in comment 12(d)(2)–1.i detailing indicia of the consumer's awareness and intent to provide a security interest. The proposal would move this guidance to comment 12(d)(2)–1.ii. In addition, under the proposal, the requirement in current 12(d)(2)–1.ii that the security interest must be one that other creditors could obtain in the consumer's deposit accounts to the same extent as the card issuer would be moved to proposed comment 12(d)(2)–1.iv; no substantive change is proposed.

12(d)(3) Periodic Deductions

Implementing TILA section 169, § 1026.12(d)(3) of Regulation Z provides that the prohibition on offsets set forth in § 1026.12(d)(1) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 1026.13(d)(1)).

Neither TILA section 169 nor § 1026.12(d)(3) defines ''periodically'' for purposes of § 1026.12(d)(3). The Bureau is concerned that, with respect to credit card accounts that are accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, some card issuers may attempt to circumvent the prohibition on offsets by obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt on a daily or weekly basis from the prepaid account to help ensure that the debt is repaid. If ''periodically'' is not defined for purposes of § 1026.12(d)(3), the Bureau believes that card issuers that offer credit card accounts linked to a prepaid account may obtain a consumer's written authorization to daily or weekly debits to the prepaid account to repay the credit card debt given the overall creditworthiness of prepaid accountholders. In addition, the Bureau believes prepaid consumer may grant the authorization more readily than other credit card holders because consumers may believe that they must provide written authorization to allow a card issuer to deduct all or part of the cardholder's credit card debt from the linked prepaid account.

An appropriate interval for ''periodic[ ]'' deduction plans may depend on the facts and circumstances of the particular credit plan, but because of the above reasons, the Bureau believes that an appropriate interval for credit cards linked to prepaid cards is no more frequently than once per calendar month. The proposal would set forth a new proposed § 1026.12(d)(3)(ii) that provides that, with respect to credit cards that are also prepaid cards or credit cards that are also account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, for purposes of § 1026.12(d)(3), ''periodically'' means no more frequently than once per calendar month. For example, a deduction could be scheduled for each monthly due date disclosed on the applicable periodic statement in accordance with the requirements of § 1026.7(b)(11)(i) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer. Thus, under proposed § 1026.12(d)(3), with respect to such credit card accounts linked to a prepaid account, a card issuer may deduct all or a part of the cardholder's credit card debt automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so. The Bureau believes that allowing a card issuer to execute a preauthorized transfer once per calendar month to repay all or some of a consumer's credit card balance is appropriate because card issuers of credit cards linked to prepaid accounts are prohibited from providing periodic statements more frequently than on a monthly basis and the due date must be the same day of the month for each billing cycle. As discussed in the section-by-section analysis of §§ 1026.5(b)(2)(ii) and .7(b)(11), the card issuer must adopt reasonable procedures to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date must be the same day of the month for each billing cycle.

Proposed comment 12(d)(3)–3 would provide an example to illustrate when card issuers could deduct automatically all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under § 1026.12(d)(3) with respect to credit cards that are also prepaid cards or credit cards that are also account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Proposed comment 12(d)(3)–3 would provide that with respect to those types of credit cards, a card issuer would not be prohibited under § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of § 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account (such as a prepaid account) more frequently than once per calendar month, pursuant to such a plan. The proposed comment would provide the following example: With respect to credit cards that are also prepaid cards or credit cards that are also account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, assume that a periodic statement is sent out each month to a cardholder on the first day of the month and the payment due date for the amount due on that statement is the 25th day of each month. In this case, the card issuer would not be prohibited under § 1026.12(d) from automatically deducting the amount due on the periodic statement on the 25th of each month, or on an earlier date in each calendar month, from a deposit account held by the card issuer, if the

deductions are pursuant to a plan that is authorized in writing by the cardholder (as discussed in comment 12(d)(3)–1) and comply with the limitations in § 1026.13(d)(1). Proposed comment 12(d)(3)–3 also would explain that the card issuer would be prohibited under § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made to the deposit account.

The Bureau solicits comment on situations where at the time a preauthorized payment is set to occur, the prepaid account does not have sufficient funds to cover the amount of the credit card payment. How do issuers anticipate handling this situation, including cases where the prepaid account contains funds sufficient to pay some but not all of the credit card payment due? Do issuers anticipate charging a specific fee because the preauthorized payment could not be completed, in addition to any late fee that might be charged if the credit card balance was not paid by the due date? Should the Bureau adopt any specific rules to address these issues? If so, what rules should the Bureau adopt?

The Bureau believes that the proposed requirement in § 1026.12(d)(3), along with proposed changes to the timing requirement for a periodic statement in § 1026.5(b)(2)(ii), and the compulsory-use provision in Regulation E (proposed § 1005.10(e)(1)), are necessary to fully effectuate the intent of the provisions and would allow consumers to retain control over the funds in their prepaid accounts even when a credit card feature becomes associated with that account, which is consistent with the prohibition on offsets. In particular, with these proposed changes, such card issuers (1) would be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle; (2) could move funds automatically from the asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date (pursuant to the consumer's signed, written agreement that the issuer may do so); and (3) would be required to offer consumers a means to repay their outstanding credit balances other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking Web site).

The proposal would also make two technical revisions to § 1026.12(d)(3) and related commentary. First, § 1026.12(d)(3) would be moved to proposed § 1026.12(d)(3)(i). Second, the proposal would revise comment 12(d)(3)–1.iii, which references EFTA section 913 to also reference Regulation E § 1005.10(e), which implements that section of EFTA.

12(h) Timing Requirement for Solicitation or Application With Respect to a Prepaid Cardholder

As discussed in more detail in the section-by-section analysis of § 1026.12(a), credit cards generally may not be issued on an unsolicited basis. Thus, TILA section 132 and § 1026.12(a) prevent a card issuer from issuing on an unsolicited basis a prepaid card that also is a credit card at the time of issuance. For example, prepaid cards that are sold in retail locations could not access automatically an overdraft credit feature that would make the prepaid card into a credit card at the time the prepaid card is sold. Under TILA section 132 and § 1026.12(a), a card issuer could add a credit card feature to a prepaid card only in response to a consumer's explicit request or application.

The Bureau proposes to use its authority in TILA section 105(a) and Dodd-Frank Act section 1032(a) to add new proposed § 1026.12(h)(1) that would require card issuers to wait at least 30 calendar days after a prepaid card is registered before the card issuer may make a solicitation or provide an application to the holder of the prepaid account to open a credit or charge card account. In addition, card issuers would be required to wait until at least 30 calendar days after registration to open a credit card account for the holder the prepaid account that would be accessed by the prepaid card or by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Moreover, if a card issuer has established an existing credit or charge card account with a holder of a prepaid card that is accessed by a prepaid card or an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the card issuer would be prevented from allowing an additional prepaid card obtained by the consumer from the card issuer to access the credit or charge card account, or permitting credit from the credit or charge card account to be deposited into an additional prepaid account, until at least 30 calendar days after the consumer has registered the additional prepaid account.

Proposed § 1026.12(h)(2) would define ''solicitation'' for purposes of § 1026.12(h)(1) to mean an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. This proposed definition of ''solicitation'' is the same as one used with respect to credit card disclosures set forth in § 1026.60 that must be provided on or with credit card applications and solicitations. *See* the section-by-section analysis of § 1026.60. Consistent with § 1026.60, proposed § 1026.12(h)(2) also would specify that a ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S. C. 1681a(l)) for a credit or charge card would be a solicitation for purposes of proposed § 1026.12(h). Comment 12(h)–1 would explain that a prepaid card or prepaid account is registered, such that the 30-day interval required by § 1026.12(h) begins, when the issuer of the prepaid card or prepaid account successfully completes its collection of consumer identifying information and identity verification in accordance with the requirements of applicable Federal and state law. The beginning of the required 30-day interval would be triggered by successful completion of collection of consumer identifying information and identity verification, not by the consumer's mere purchase or obtaining of the card. Comment 12(h)–2 would provide a cross-reference to § 1026.12(a)(1) and comment 12(a)(1)–7 for additional rules that would apply to the addition of a credit or charge card account to a previously-issued prepaid account. As discussed in the section-by-section of § 1026.12(a)(1), comment 12(a)(1)–7 would provide that a credit card feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with § 1026.12(h). Proposed comment 12(h)–2 also would cross-reference § 1026.60 and related commentary for disclosures that generally must be provided on or with applications or solicitations to open a credit or charge card account.

The Bureau notes that if the prepaid card issuer offers the credit plan accessed by the prepaid card, the prepaid card issuer is the ''card issuer'' for purposes of Regulation Z, including § 1026.12(h). This is because the prepaid card accessing the credit plan is

a credit card and § 1026.2(a)(7) defines ''card issuer'' as a person that issues a credit card or that person's agent with respect to the card. *See* § 1026.2(a)(7). If a third party offers the credit plan that is accessed by a prepaid card, both the person offering the credit plan and the prepaid card issuer are card issuers for purposes of § 1026.12(h). In this case, the person offering the credit plan would be an agent of the prepaid card issuer. *See* proposed comment 2(a)(7)–1.ii. For credit plans accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the person extending the credit and issuing the account number would be a card issuer for purposes of § 1026.12(h). For those types of credit plans, the prepaid card issuer would not be a card issuer for purposes of § 1026.12(h). Nonetheless, the prepaid card issuer would be covered under Regulation E proposed § 1005.18(g)(1), which would prevent the financial institution from allowing credit extensions from a credit plan subject to Regulation Z to be deposited in the prepaid account, where the credit plan is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. See the section-by-section analysis of Regulation E proposed § 1005.18(g)(1). The Bureau believes that covering both the prepaid card issuer and the person extending credit under the credit card account (if different from the prepaid card issuer) would help avoid circumvention of the provisions in § 1026.12(h). The Board solicits comment on whether additional provisions are needed to avoid circumvention, such as requiring card issuers to adopt policies and procedures reasonably designed to ensure that its affiliates, service providers, or commercial entities with whom the card issuer has a contractual relationship do not make a solicitation or provide an application as described in § 1026.12(h)(1) to the consumer during the 30-day interval.

The Bureau believes that use of its authority under TILA section 105(a) to add the proposed provisions in § 1026.12(h) is necessary and proper to effectuate the purposes of TILA to help ensure the informed use of the credit or charge card account when it is opened. Specifically, TILA section 102 provides that one of the main purposes of TILA is to promote the informed use of credit by ensuring meaningful disclosure of credit terms so that consumer will be able to compare more readily the various credit terms available to him or her and avoid the uninformed use of credit. 15 U.S.C. 1601. Furthermore, TILA section 132 requires that ''[n]o credit card shall be issued except in response to a request or application therefor.'' 15 U.S.C. 1642. In addition, the Bureau believes that the proposed waiting period will, consistent with Dodd-Frank section 1032(a), ensure that the features of the credit card connected to the prepaid account are fully, accurately, and effectively disclosed to consumers in a manner that permits the consumers to understand the costs, benefits, and risks associated with the account.

The Bureau believes that the requirement in proposed § 1026.12(h) of a 30-day waiting period for prepaid-linked credit cards would promote the informed and voluntary use of credit. Under § 1026.12(h)(1), a card issuer would be required to wait 30 calendar days after a prepaid account has been registered by the consumer holding the prepaid account before the card issuer may open a credit or charge card account, or may provide a solicitation or application to open a credit or charge card account, that will be accessed by the prepaid card, or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the card issuer. The Bureau believes that it would promote the informed use of the credit to separate the decision to purchase and register a prepaid account from the decision to accept an offer to add a credit card account to that prepaid account. The Bureau believes that without this proposed provision, prepaid card issuers would be likely to provide solicitations or applications to open credit card accounts linked to prepaid accounts to prepaid cardholders at the time the prepaid accounts are registered because prepaid card issuers will already be collecting information from the cardholders in order to register the prepaid accounts.

As discussed in the section-by-section analysis of § 1005.18(g)(1), the Bureau believes that separating these decisions would better allow consumers to focus on the terms and conditions that apply to the prepaid account at the time of purchase and registration which may enable the consumer to better understand those terms and conditions, consistent with EFTA section 905(a) which requires financial institutions to disclose the terms and conditions of electronic fund transfers involving a consumer's account. The Bureau also believes that requiring at least 30 calendar days to elapse between the registration of a prepaid account and any offer of a linked credit or charge card account would enhance consumer understanding of the terms of the prepaid account and would help consumers to make more informed decisions regarding linking a credit or charge card account to the prepaid account.

In addition, as discussed in the section-by-section analysis of Regulation E proposed § 1005.18(e)(3), the registration process is critical to application of full Regulation E protections. Specifically, Regulation E proposed § 1005.18(e)(3) provides that for all prepaid accounts other than payroll card accounts and government benefit accounts, a financial institution is not required to provide error resolution and limited liability protections for unverified prepaid accounts, so long as the financial institution discloses to consumers in advance the risks of not registering a prepaid account. If a consumer asserts an error on an unregistered account, the financial institution must collect identifying information and verify the consumer's identity, and then investigate the error. If a card issuer were allowed to market credit card accounts to consumers at the time of prepaid account registration, the Bureau fears that that consumers could believe that they are required to request that the credit or charge card account be linked to the prepaid account in order to register or access the prepaid account. This could cause some consumers to not register their prepaid accounts and lose important protections under Regulation E.

Moreover, the Bureau believes that the 30-day time period between the registration of a prepaid account, and when a linked credit or charge card account can be offered to the holder of the prepaid account, would help consumers to make more informed decisions about whether to request that the credit or charge card account be linked to the prepaid account. The Bureau believes that consumers may be able to focus more effectively on the credit terms of the linked credit feature, and make a more informed decision whether to request such a credit card account, if the decision to accept the linked credit card account occurs apart from the process to register the card. Without these protections, card issuers may attempt to market the credit card account to prepaid cardholders at the time they purchase the prepaid card or at registration. Consumers may feel pressured to make decisions on whether

to add the credit card accounts without the time to fully consider the terms of the credit card accounts and the consequences of obtaining the accounts. The Bureau believes that a consumer's decision to add a credit card account to the prepaid account should be a distinct phase from the decision to obtain or register the prepaid card so that consumers have the time to consider fully the terms of the credit card account and consider the consequences of obtaining the credit card account.

Section 1026.13 Billing Error Resolution

TILA section 161, as implemented in § 1026.13 of Regulation Z, sets forth error resolution procedures for billing errors that relate to any extension of credit that is made in connection with an open-end account or credit card account. Specifically, it requires a consumer to provide written notice of an error within 60 days after the first periodic statement reflecting the alleged error is sent. 15 U.S.C. 1666. The written notice triggers a creditor's duty to investigate the claim within prescribed time limits. The proposal would revise certain provisions that apply to the resolution procedures for billing errors set forth in § 1026.13 to provide guidance on how those provisions apply to open-end plans or credit card account accessed by a prepaid card or an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

Specifically, as discussed in more detail below, the proposal would address issues related to the definition of ''billing error'' in § 1026.13(a)(3) related to disputes about property or services that are not delivered to the consumer as agreed. The proposal would amend commentary to § 1026.13(a)(3) to address the circumstances in which a consumer may assert a billing error under § 1026.13(a)(3) with respect to purchases that are made with funds that have been deposited into a prepaid account and those funds were credit from a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In addition, the proposal would revise § 1026.13(i), which sets forth rules on whether billing error procedures set forth in Regulation E or Regulation Z apply if an extension of credit is incident to an electronic fund transfer.

13(a) Definition of Billing Error

13(a)(3)

Section 1026.13(a) defines a ''billing error'' for purposes of the error resolution procedures. Under § 1026.13(a)(3), the term ''billing error'' includes disputes about an extension of credit for property or services not accepted by the consumer or not delivered to the consumer as agreed. Comment 13(a)(3)–2 explains that, in certain circumstances, a consumer may assert a billing error under § 1026.13(a)(3) with respect to property or services obtained through any extension of credit made in connection with a consumer's use of a third-party payment service.

Specifically, comment 13(a)(3)–2 provides that § 1026.13(a)(3) generally applies to disputes about goods and services that are purchased using a third-party payment intermediary, such as a person-to-person Internet payment service, funded through use of a consumer's credit plan when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Under these circumstances, the property or service for which the extension of credit is made is not the payment service, but rather the good or service that the consumer has purchased using the payment service. Thus, for example, § 1026.13(a)(3) does not apply to purchases using a third party payment intermediary that is funded through use of a credit plan if: (1) The extension of credit is made to fund the third-party payment intermediary ''account,'' but the consumer does not contemporaneously use those funds to purchase a good or service at that time; or (2) The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.

Similar to the provision relating to third-party intermediaries, the proposal would add proposed comment 13(a)(3)–2.ii to address situations where goods or services are purchased using funds deposited into a prepaid account and those funds are credit drawn from a credit plan that is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Proposed comment 13(a)(3)–2.ii is designed to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the credit plan using an account number other than a prepaid card, and (3) the advance is deposited into the prepaid account. This provision is not intended to apply to credit extensions for property or services that are accessed by the prepaid card directly. In that situation, there is no intervening account in which credit is deposited; instead, credit is directly accessed by the prepaid card to purchase the property or services. When credit is accessed by a prepaid card and that credit is used to fund the entire amount of a purchase of property or service, § 1026.13 applies to these transactions, and a billing error would occur under § 1026.13(a)(3) when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. See the section-by-section analysis of § 1026.13(i) for a discussion of transactions made with prepaid cards that are credit cards where transactions are partially paid with funds from the prepaid account and partially funded with credit.

Proposed comment 13(a)(3)–2.ii would provide that § 1026.13(a)(3) generally applies to disputes about goods and services that are purchased using a prepaid card funded through use of a consumer's credit plan accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Thus, for example, § 1026.13(a)(3) would not apply to purchases using a prepaid card that is funded through use of such a credit plan if: (1) The extension of credit is made to fund the prepaid account, but the consumer does not contemporaneously use those funds to purchase a good or service at that time; or (2) The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.

The Bureau believes that for purposes of billing error resolution procedures, it is appropriate to consider purchases in the situations described above to be purchases made with the credit plan. In cases where the extension of credit is

made at the time the consumer purchases the good or service and matches the amount of the transaction to purchase the good or service (including ancillary taxes and fees), from the consumer's perspective, there is likely to be little difference between this transaction and a transaction where a consumer would use his or her prepaid card to access a credit plan to fund the entire amount of the purchase. In the latter situation, a purchase made with the prepaid card using a credit plan accessed by the card to fund the entire amount of the purchase would be a billing error under § 1026.13(a)(3) when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. Due to the similarities, consumers may reasonably believe that those two types of similar transactions would be afforded the same billing error protections.

The proposal also would make a technical revision to comment 13(a)(3)–2, by moving the existing language of the comment to proposed comment 13(a)(3)–2.i.

13(i) Relation to Electronic Fund Transfer Act and Regulation E

Section 1026.13(i) provides guidance on whether billing error provisions under Regulation E or Regulation Z apply in certain overdraft related transactions. Specifically, § 1026.13(i) provides that if an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor must comply with the requirements of Regulation E, § 1005.11 governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). The provisions of Regulation Z § 1026.13 (d) and (g) would still apply to these transactions.

As discussed in the Overview of Regulation Z Proposal section, currently under Regulation Z, overdraft credit is subject to Regulation Z only if there is an agreement to extend credit, which is typically described as an overdraft line of credit. In those cases, § 1026.13(i) applies when a transaction is partially funded through an electronic fund transfer from an asset account and partially funded through an overdraft credit line. Such transactions will be subject to both Regulation Z and E. Under § 1026.13(i), for those transactions, the creditor must comply with the requirements of Regulation E § 1005.11 governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). The provisions of Regulation Z § 1026.13 (d) and (g) would still apply to these transactions. *See* comment 13(i)–2. For overdraft lines of credit, (1) if a transaction only accesses credit and does not access funds in the asset account, the error resolution provisions in Regulation Z apply and the ones in Regulation E do not apply; and (2) if a transaction only accesses the funds in the asset account and does not access credit, the error resolution provisions in Regulation E apply and the ones in Regulation Z do not apply. For overdraft credit where there is not an agreement to extend credit, Regulation Z does not apply. For those overdraft credit programs, overdraft transactions are governed solely by the error resolution provisions in Regulation E. *See* comment 13(i)–2. Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension. *See* comment 13(i)–1.

As discussed above in the Overview of Regulation Z Proposal section, both overdraft services and overdraft lines of credit linked to prepaid accounts would be subject to Regulation Z's open-end rules set forth in subpart B if they meet the definition of open-end credit or they are accessed by a credit card. For such overdraft credit plans accessed by a prepaid card, where a transaction is partially funded through an electronic fund transfer from an prepaid account and partially funded from credit, the proposal would provide that a creditor must comply with the requirements of Regulation E § 1005.11 governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). *See* proposed § 1026.13(i)(2). The provisions of Regulation Z § 1026.13(d) and (g) would still apply to these transactions.

For asset accounts other than prepaid accounts, proposed § 1026.13(i)(1) would continue to focus on whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account. On the other hand, for prepaid accounts, proposed § 1026.13(i)(2) would apply if credit is extended under a credit plan that is subject to subpart B and the credit extended is incident to an electronic fund transfer when the consumer's prepaid account is overdrawn. A credit plan accessed by a prepaid card that is a credit card would be subject to subpart B, and thus proposed § 1026.13(i)(2) would apply. Under the proposal, a prepaid card can be a credit card under Regulation Z even if the creditor retains discretion to not pay the credit transactions. As discussed in the section-by-section analysis of § 1026.2(a)(15)(i), proposed comment 2(a)(15)–2.i.F would provide that the term ''credit card'' for purposes of Regulation Z includes a prepaid card that is a single device that may be used from time to time to access a credit ''plan,'' except if the prepaid card only accesses credit that is not subject to any finance charge described in § 1026.4 or any fee described in § 1026.4(c), such as an application fee to apply for credit or a late payment fee, and is not payable by written agreement in more than four installments. As discussed in the section-by-section analysis of § 1026.2(a)(20), with respect to credit that is accessed by a prepaid card, a ''plan'' includes a program where the consumer is obligated contractually to repay the credit. For example, such a plan includes a program under which a creditor routinely pays transactions when a consumer has insufficient or unavailable funds in a prepaid account and the consumer is obligated contractually to repay those transactions. Under the proposal, such a program would constitute a plan notwithstanding that the creditor retains discretion not to pay such transactions. Thus, with respect to prepaid accounts, proposed § 1026.13(i)(2) focuses on whether credit is extended under a credit plan that is subject to subpart B incident to an electronic fund transfer and extended when the consumer's prepaid account is overdrawn, rather than whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

Comment 13(i)–1 would be revised to explain that with respect to a credit account accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, § 1026.13(i) does not apply to transfers from that plan to a prepaid account. Under the proposal, the creditor for such transfers must comply with the billing error provisions in § 1026.13. This guidance is designed to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the account using an account number other

than a prepaid card, and (3) the advance is deposited into the prepaid account. The provisions in § 1026.13(i) would not apply to these types of credit accounts because these credit plans do not involve overdraft transactions that are partially funded through electronic fund transfers from prepaid accounts and partially funded from credit transactions. For these types of credit accounts, transactions where credit is deposited into the prepaid account are separate from transactions that withdraw the funds from the prepaid account. Proposed comment 13(i)–1 would specify that transfers from such credit plans to a prepaid account are subject to the error resolution procedures in Regulation Z § 1026.13 and are not covered by the rules in § 1026.13(i).

The proposal also would add proposed comment 13(i)–4 to provide guidance on how proposed § 1026.13(i) applies to overdraft credit plans that are subject to subpart B such as credit plans that are accessed by prepaid cards that are credit cards. Specifically, proposed comment 13(i)–4 would provide that for transactions involving a credit plan that is subject to subpart B when the credit extension is incident to an electronic fund transfer and the credit is extended where the prepaid account is overdrawn, whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit under an overdraft plan, and does not include a debit to the prepaid account, the error resolution requirements of Regulation Z would apply. If the transaction debits a prepaid account only (with no credit extended under the overdraft plan), the provisions of Regulation E would apply.

Nonetheless, under the proposal, if the transaction debits a prepaid account but also draws on an overdraft plan subject to subpart B, a creditor would be required to comply with the requirements of Regulation E, §§ 1005.11 and proposed § 1005.18(c), governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f) and (h).

Comment 13(i)–3 provides additional guidance on how the error resolution provisions of Regulations Z and E interact. Comment 13(i)–3 provides an example of the application of § 1026.13(i) to a transaction where a consumer withdraws money at an automated teller machine and activates an overdraft line of credit on the checking account. In this case, an error asserted with respect to the transaction would be subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction. In addition, the creditor would not need to provisionally credit the consumer's account, under Regulation E § 1005.11(c)(2)(i), for any portion of the unpaid extension of credit. Also, the creditor would need to credit the consumer's account under § 1005.11(c) with any finance or other charges incurred as a result of the alleged error. The provisions of §§ 1026.13(d) and (g) would apply only to the credit portion of the transaction. Proposed comment 13(i)–4 would provide similar guidance for how § 1026.13(i)(2) applies to transactions involving an overdraft credit plan subject to subpart B in connection with a prepaid account (such as a credit plan accessed by a prepaid card that is a credit card).

Proposed comment 13(i)–5 would explain that an overdraft credit plan would not be subject to subpart B if the credit plan is only accessed by a prepaid card that is not a credit card. A prepaid card would not be a credit card if the prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. *See* proposed comment 2(a)(15)–2.i.F. For these types of credit plans, only the error resolution provisions in Regulation E would apply.

The Bureau believes that it is appropriate to apply the error resolution procedures in Regulation E generally to transactions that debit a prepaid account but also draw on an overdraft plan subject to subpart B. The Bureau believes that this proposed approach is consistent with EFTA section 909(c), which applies EFTA's limits on liability for unauthorized use to transactions which involve both an unauthorized electronic fund transfer and an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn. 15 U.S.C. 1693g(c). An unauthorized electronic fund transfer on a prepaid account generally would be subject to the limits on liability in Regulation E § 1005.6 and proposed § 1005.18(e); an unauthorized electronic fund transfer on a prepaid account also is an error for purposes of the error resolution procedures set forth in Regulation E § 1005.11 and proposed § 1005.18(e). *See* Regulation E § 1005.11(a)(1). Although billing errors under Regulation Z § 1026.13(a) include a broader category than only unauthorized use, the Bureau believes it is necessary and proper to exercise its adjustment and exception authority under TILA section 105(a) to apply Regulation E's error resolution provisions and limited Regulation Z error resolution provisions to these transactions, to facilitate compliance with EFTA section 908 and TILA section 161 on error resolution. The Bureau is concerned that conflicting provisions could apply to transactions that debit a prepaid account but also draw on an overdraft plan subject to subpart B if Regulation E's provisions applied to limits on liability for unauthorized use, and Regulation Z's provisions generally apply to investigation of billing errors, including transactions involving unauthorized use. To avoid these potential conflicts and to facilitate compliance, under § 1026.13(i)(2), if the transaction debits a prepaid account but also draws on an overdraft plan subject to subpart B, a creditor would be required to comply with the requirements of Regulation E, § 1005.11 and proposed § 1005.18(e), governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f) and (h). This approach is also consistent with the existing provisions in Regulation E § 1005.12(a)(1)(iv) and Regulation Z § 1026.13(i), which applies Regulation E's liability limitation and error resolution procedures to an extension of credit that is incident to an electronic fund transfer for overdraft lines of credit. The Bureau specifically solicits comment on this approach and any operational issues that might arise under this approach.

The proposal also would make technical revisions to § 1026.13 and related commentary. First, the existing language of § 1026.13(i) would be moved to proposed § 1026.13(i)(1) and revised to specify that this provision would apply to asset accounts that are not prepaid accounts. Second, comments 13(i)–2 and –3 would be revised to specify that they only apply to debit cards and not to prepaid cards.

Subpart G

Except for § 1026.60, which concerns certain credit card disclosures, all of the provisions in subpart G implement the Credit CARD Act. The provisions in subpart G that implement the Credit CARD Act generally apply to a ''card issuer'' as defined in § 1026.2(a)(7) that is extending credit under a ''credit card account under an open-end (not home-secured) consumer credit plan'' as defined in § 1026.2(a)(15)(ii).[377] Among

[377] Section 1026.57(c) applies to all open-end credit. That section prohibits a card issuer or creditor from offering a tangible item to a college

other things, subpart G contains provisions to implement the Credit CARD Act that:

- Prohibit credit card issuers from extending credit without assessing the consumer's ability to pay, with special rules regarding the extension of credit to persons under the age of 21. (§ 1026.51)
- Restrict the amount of required fees that an issuer can charge during the first year after an account is opened. (§ 1026.52(a)(1))
- Limit the amount issuers can charge for ''back-end'' penalty fees, such as when a consumer makes a late payment or exceeds his or her credit limit. (§ 1026.52(b)(1))
- Ban ''declined transaction fees'' and other penalty fees where there is no cost to the issuer associated with the violation of the account agreement. (§ 1026.52(b)(2))
- Restrict the circumstances under which issuers can increase interest rates on credit card accounts and establish procedures for doing so. (§ 1026.55 and 59)
- Restrict fees for over-the-limit transactions to one per billing cycle and require that the consumer opt-in to payment of such transactions in order for the fee to be charged. (§ 1026.56)
- Require institutions of higher education to publicly disclose agreements with credit card issuers and limit the marketing of credit cards on or near college campuses. (§ 1026.57)

In addition, subpart G also contains § 1026.60, which sets forth disclosures that card issuers generally must provide on or with a solicitation or an application to open a credit or charge card account.

As discussed above in the Overview of Regulation Z Proposal section, the Bureau anticipates that most credit accessed by a prepaid card, or credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, would meet the definition of ''open-end credit'' if the creditor imposes a finance charge for the credit. See section-by-section analysis of the definition of ''credit'' in § 1026.2(a)(14), the definition of ''open-end-credit'' in § 1026.2(a)(20), and the definition of ''finance charge'' in § 1026.4. In addition, as discussed above in the section-by-section analysis of §§ 1026.2(a)(7), (a)(15)(i) and (a)(15)(ii), an open-end credit plan accessed by a prepaid card that is a credit card, or by an account number that is a credit card where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, would be a ''credit card account under an open-end (not home-secured) consumer credit plan,'' and the person issuing the prepaid card or account number would be a ''card issuer.''

As a result, pursuant to the Bureau's proposed amendments, certain provisions in subpart G generally would apply to open-end credit that is accessed by a prepaid card that is a credit card (such as overdraft credit) or open-end credit that is accessed by an account number that is a credit card and deposited into a prepaid account where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.[378]

As discussed in more detail below, the Bureau is proposing to amend commentary to the following provisions to provide guidance on how certain provisions in subpart G would apply to open-end credit plans that are accessed by prepaid cards that are credit cards or account numbers as described above that are credit cards:

(1) Section 1026.52(a), which restricts required fees charged during the first year the account is opened;

(2) Section 1026.52(b), which restricts the imposition of penalty fees, including the ban on declined transaction fees; and

(3) Section 1026.57, which limits the marketing of credit cards to college students.[379]

The Bureau also is proposing to provide guidance on how § 1026.60, which requires disclosures to be provided on or with a solicitation or application to open a credit or charge card account, applies to card issuers that are issuing prepaid cards that are credit cards or account numbers, as described above, that are credit cards.

Section 1026.52 Limitations on Fees

52(a) Limitations During First Year After Account Opening

TILA section 127(n)(1) restricts the imposition of certain fees during the first year after opening a credit card account under an open-end consumer credit plan in order to restrict certain ''fee harvester'' or subprime credit cards that charged a large amount of fees early in the account relationship to the credit line, which significantly reduced the credit available to a consumer during the first year. Specifically, the statute provides that ''no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account'' where the account terms would require consumers to pay ''an aggregate amount [of non-exempt fees] in excess of 25 percent of the total amount of credit authorized under the account when the account is opened.''

This provision is implemented in § 1026.52(a), which provides generally that the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. Fees not subject to the 25 percent restriction are late payment fees, over-the-limit fees, and returned-payment fees; or fees that the consumer is not required to pay with respect to the account. *See* § 1026.52(a)(2). Existing comment 52(a)(1)–1 provides that the 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account to the card issuer or from another credit account provided by the card issuer).

Particularly in the context of prepaid cards with linked credit card accounts that are designed to provide liquidity to the prepaid account, the Bureau believes that the statute and regulation provide important protections to consumers. From the consumer's perspective, there is no practical difference between a fee charged against the credit card account and a fee charged to the linked prepaid account in order to access credit because both functionally reduce the total amount of credit available to the consumer through the prepaid account until such fees are paid. If the statute were not interpreted to include fees charged across any linked accounts, the Bureau is concerned that card issuers could hide non-exempt fees reducing the credit made available under such accounts by artificially charging such fees as negative balances on asset accounts or

student on or near a college campus or at an event sponsored by the college to induce the student to apply for or open an open-end credit plan.

[378] A person would not be extending open-end credit where the person is not charging a finance charge for the credit that is accessed by a prepaid card or by an account number where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. See section-by-section analysis of § 1026.2(a)(17) and (a)(20).

[379] The Overview of the Regulation Z Proposal describes some of the benefits from these regulations for prepaid account consumers.

by creating separate artificially distinct credit accounts and attempting to collect the non-exempt fees from those linked credit accounts. The Bureau believes that such arrangements would subvert the purpose and meaning of TILA section 127(n)(1).

As described below, the Bureau is proposing to amend several comments to § 1026.52(a) to provide examples and other guidance on how this provision would apply to credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards, or accessed by account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The Bureau seeks comment on whether additional amendments to the regulation or commentary would be helpful to effectuate its interpretation of the statute or to facilitate compliance. For example, the Bureau seeks comment on whether it would be helpful to mandate the disclosure to consumers of the initial credit line that is made available under the terms of the account, including any linked credit accounts.

52(a)(1) General Rule

Section 1026.52(a)(1) provides that generally the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. Fees not subject to the 25 percent restriction are late payment fees, over-the-limit fees, and returned-payment fees; or fees that the consumer is not required to pay with respect to the account. *See* § 1026.52(a)(2).

The Bureau is proposing to amend existing comment 52(a)(1)–1, which explains that the 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account to the card issuer or from another credit account provided by the card issuer). This comment also provides two examples illustrating the limitations on fees set forth in § 1026.52(a).

The proposal would amend comment 52(a)(1)–1 to add a prepaid account as an example of a consumer's asset account. Thus, for a credit card account under an open-end (not home-secured) consumer credit plan that are accessed by a prepaid card that is a credit card, or accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment to the card issuer from the consumer's prepaid account or other asset account or from another credit account provided by the card issuer). The Bureau is also proposing to add two new examples to existing comment 52(a)(1)–1 to illustrate how the prohibition in § 1026.52(a) applies to credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards. *See* proposed comment 52(a)(1)–1.iii and .iv. While the proposed examples that would be added to comment 52(a)(1)–1.iii and .iv assume that a consumer opens a credit account accessed by the prepaid card that is a credit card, the same proposed guidance would apply to credit card accounts that are accessed by account numbers that are credit cards where extensions of credit are only permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

52(a)(2) Fees Not Subject to Limitations

Section 1026.52(a)(2) provides that the 25 percent restriction does not apply to late payment fees, over-the-limit fees, and returned-payment fees, or fees that the consumer is not required to pay with respect to the account. Existing comment 52(a)(2)–1 provides guidance on the types of fees that are included in the 25 percent threshold. Specifically, existing comment 52(a)(2)–1 provides that except as provided in § 1026.52(a)(2), § 1026.52(a) applies to any fees or other charges that a card issuer will or may require the consumer to pay with respect to a credit card account during the first year after account opening, other than charges attributable to periodic interest rates. The existing comment further clarifies that for example, § 1026.52(a) applies to: (1) Fees that the consumer is required to pay for the issuance or availability of credit described in § 1026.60(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit; (2) fees for insurance described in § 1026.4(b)(7) or debt cancellation or debt suspension coverage described in § 1026.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account; (3) fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases); (4) fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by § 1026.52(a)(2)(i)); (5) fixed finance charges; and (6) minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

The Bureau also is proposing to add two additional comments to § 1026.52(a)(2) to provide specific guidance on the types of fees that would be covered by the 25 percent limitation for credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards, or accessed by account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

First, proposed comment 52(a)(2)–2 would provide additional examples of the types of fees that would be covered by the 25 percent limitation for credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards. Specifically, proposed comment 52(a)(2)–2 provides that except as provided in § 1026.52(a)(2), § 1026.52(a) applies to any charge or fee, other than a charge attributable to a periodic interest rate, that the card issuer will or may require the consumer to pay in connection with a credit account accessed by a prepaid card that is a credit card, including fees that are assessed on the prepaid account in connection with credit accessed by the prepaid card. Under proposed comment 52(a)(2)–2, this would include, but is not limited to: (1) Per-transaction fees for ''shortages'' or ''overdrafts;'' (2) fees for transferring funds from a credit account to a prepaid account that are both accessed by the prepaid card; (3) a daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a prepaid account is in ''overdraft'' status, or would be in overdraft status but for funds supplied by a linked line of credit accessed by the prepaid card; or (4) a daily, weekly, or monthly (or other periodic) fee (other than a periodic

interest rate) assessed each period a line of credit accessed by the prepaid card has an outstanding balance.

Second, proposed comment 52(a)(2)–3 would provide additional examples of the types of fees that that would be covered by the 25 percent limitation for credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, proposed comment 52(a)(2)–3 would provide that except as provided in § 1026.52(a)(2), § 1026.52(a) applies to any charge or fee, other than a charge attributable to a periodic interest rate, that the card issuer will or may require the consumer to pay in connection with a credit account accessed by an account number that is a credit card where extensions of credit are only permitted to be deposited directly only into particular prepaid accounts specified by the creditor, including fees that are assessed on the prepaid account in connection with the credit assessed by the account number. Proposed comment 52(a)(2)–3 would further clarify that, this would include, but is not limited to: (1) Per-transaction fees for ''shortages'' or ''overdrafts;'' (2) fees for transferring funds from the credit account to a prepaid account; and (3) a daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period the line of credit accessed by the account number has an outstanding balance.

Proposed comment 52(a)(2)–3 is designed to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the open-end account using an account number, and (3) the advance is deposited directly into the prepaid account. Proposed comment 52(a)(2)–3 would not apply to a credit card account that is accessed by an account number that is a prepaid card; proposed comment 52(a)(2)–2 would provide guidance on that type of credit card account.

Finally, the Bureau proposes several technical revisions. Current comments 52(a)(2)–2 and –3 would be moved to comments 52(a)(2)–4 and -5 respectively; no substantive change is intended. In addition, the section heading to § 1026.52(a) would be revised to delete the reference to limitations prior to account opening to be consistent with the scope of the limitations set forth in § 1026.52(a); no substantive change is intended.

52(b) Limitations on Penalty Fees

TILA section 149(a) provides that ''[t]he amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.'' 15 U.S.C. 1665d(a). TILA section 149(e) provides that the Bureau, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, may issue rules to provide an amount for any penalty fee or charge described in TILA section 149(a) that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates. 15 U.S.C. 1665d(e).

Implementing TILA section 149, § 1026.52(b) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee: (1) Is consistent with either the cost analysis in § 1026.52(b)(1)(i) or the safe harbors in § 1026.52(b)(1)(ii); and (2) Does not exceed the dollar amount associated with the violation.[380]

Section 1026.52(b)(2)(i)(B) provides a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. Section 1026.52(b)(2)(i)(B)(*1*) through (*3*), respectively, would prohibit the following fees because there is no dollar amount associated with the following violations: (1) Transactions that the card issuer declines to authorize; (2) Account inactivity; and (3) The closure or termination of an account.

The Bureau is proposing to add comment 52(b)(2)(i)–7 to provide guidance on when the ban on declined transaction fees in § 1026.52(b)(2)(i)(B)(*1*) would apply in the context of prepaid accounts. Specifically, this proposed comment would provide that § 1026.51(b)(2)(i)(B)(*1*) applies to declined transaction fees where an account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In addition, the proposed comment would clarify that with respect to a credit card that is a prepaid card, the prohibition in § 1026.52(b)(2)(i)(B)(*1*) applies to the consumer's transactions using the prepaid card where a declined transaction would have accessed the consumer's credit account with the card issuer had it been authorized. A fee for declining such a transaction is no different than a fee for declining a credit card transaction, which is prohibited by current § 1026.52(b)(2). Thus, if a transaction using a prepaid card that is a credit card would have accessed the credit card account had it been authorized, the card issuer may not impose a declined transaction fee for declining that transaction. Finally, the proposed comment would provide that fees imposed for declining a transaction that would have only accessed the prepaid account and would not have accessed the consumer's credit card account would not be covered by § 1026.52(b)(2)(B)(i)(*1*). Such transactions do not directly involve a credit card account, although they do involve a prepaid card that is a credit card. The Bureau requests comment on whether, once a credit card account has been added to a prepaid card, it should prohibit a card issuer from thereafter assessing a fee for declining to authorize a prepaid card transaction, notwithstanding that a given transaction would not have accessed the credit card account even had it been authorized.

Section 1026.57 Reporting and Marketing Rules for College Student Open-End Credit

Overview of Proposed Changes

TILA section 140(f) requires the public disclosure of contracts or other agreements between card issuers and institutions of higher education for the purpose of marketing a credit card and imposes restrictions related to marketing open-end credit to college students. 15 U.S.C. 1650(f). TILA section 140(f)(1) provides that an institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card. 15 U.S.C. 1650(f)(1). TILA section 140(f)(2) provides that no card

[380] A card issuer also must not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction. *See* § 1026.52(b)(2)(ii).

issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made (1) on the campus of an institution of higher education; (2) near the campus of an institution of higher education, as determined by rule of the Bureau; or (3) at an event sponsored by or related to an institution of higher education. 15 U.S.C. 1650(f)(2).

In addition, TILA section 127(r) requires card issuers to submit an annual report to the Bureau containing the terms and conditions of all business, marketing, promotional agreements, and college affinity card agreements with an institution of higher education, or other related entities, with respect to any college student credit card issued to a college student at such institution. 15 U.S.C. 1637(r). TILA section 140(f) and 127(r) are implemented in § 1206.57.

Section 1026.57(b) provides that an institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card. The Bureau is proposing to add comment 57(b)–3 to § 1026.57(b) to explain that this provision of Regulation Z would apply to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of an open-end (not home-secured) consumer credit account to previously issued prepaid accounts that were issued to full-time or part-time students or (2) new prepaid accounts where a credit account may be added in connection with the prepaid account, where, in either case, the credit account would be accessed by a prepaid card that is a credit card, or would be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, under the proposal, § 1026.57(b) would require an institution of higher education to publicly disclose such agreements.

Section 1026.57(c) provides that no card issuer or creditor may offer a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made: (1) On the campus of an institution of higher education; (2) Near the campus of an institution of higher education; or (3) At an event sponsored by or related to an institution of higher education. The proposal would add comment 57(c)–7 to § 1026.57(c) to explain that § 1026.57(c) applies to either (1) the application for or opening of a credit card account that is being added to previously issued prepaid accounts that were issued to full-time or part-time students or (2) the application for or opening of a prepaid account where a credit account may be added in connection with the prepaid account, where, in either case, the credit account would be accessed by a prepaid card that is a credit card, or would be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, under the proposal, § 1026.57(c) would prevent a card issuer or creditor from offering a college student any tangible item to induce such student to apply for or open a prepaid account with a linked credit card account (as discussed above) or a credit card account linked to the previously-issued prepaid account (as discussed above), offered by such card issuer or creditor, if such offer is made: (1) On the campus of an institution of higher education; (2) Near the campus of an institution of higher education; or (3) At an event sponsored by or related to an institution of higher education.

Section 1026.57(d) requires card issuers that are a party to one or more ''college credit card agreements'' to submit annual reports to the Bureau regarding those agreements. The proposal would amend existing comments 57(a)(1)–1 and 57(a)(5)–1 relating to the definitions of ''college student credit card'' and ''college credit card agreement'' respectively to provide that § 1026.57(d) applies to a business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the addition of open-end (not home-secured) consumer credit plans to previously-issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card, or would be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Proposed comment 57(a)(1)–1 and 57(a)(5)–1 also would provide that § 1026.57(d) applies to a business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) the agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid accounts where that credit account would be accessed by a prepaid card that is a credit card, or would be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, under the proposal, a card issuer that is a party to one or more such agreements would be required to submit annual reports to the Bureau regarding those agreements.

The proposal would add or amend the comments discussed above to provide that the provisions of § 1026.57 apply to prepaid accounts that do not contain a credit card feature at the time the prepaid account is issued, so long as a credit card feature may be added to the previously issued prepaid account issued to a college student where that credit account would be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The Bureau notes that under proposed § 1026.12(h), a prepaid account at the time it is opened or issued cannot include a credit card feature. As discussed in more detail in the section-by-section analysis of proposed § 1026.12(h), under the proposal, card issuers would be required to wait at least 30 days after a prepaid account is registered before the card issuer may open a credit card account for the holder of the prepaid account, or make a solicitation or provide an application to the holder of the prepaid account to open a credit or charge card account, accessed by the prepaid card or by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Nonetheless, the Bureau believes that the marketing efforts related to a prepaid account, and the inducements given by a card issuer to open a prepaid account, also may have an impact on whether consumers may request that a credit card account be linked to the prepaid account, as discussed above, when such credit card accounts are offered to them. Thus, the proposal would add or amend the comments discussed above to provide that the provisions in that section apply to the issuance of prepaid accounts that do not have credit card accounts linked to them at the time the prepaid accounts are opened, if credit card accounts may

be linked to the prepaid accounts in the future as described above.

The Bureau requests comment on this approach. The Bureau believes it is reasonable to interpret credit cards in this section to include prepaid cards where credit features may subsequently be added, and that it is consistent with congressional concerns that college students could become trapped in a cycle of credit card debt.[381] Further, these concerns might be heightened with respect to prepaid cards to which credit card accounts may be linked, because students might be more prone to use such cards as their primary transaction account. The Bureau notes that, in light of these types of concerns, the Department of Education is undertaking a negotiated rulemaking considering, among other things, overdraft fees on prepaid cards marketed to college students.[382]

57(a) Definitions

Section 1026.57(d) requires card issuers that are a party to one or more college credit card agreements to submit annual reports to the Bureau regarding those agreements. Section 1026.57(a)(5) defines ''college credit card agreement'' to mean any business, marketing or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution. Section 1026.57(a)(1) defines ''college student credit card'' as used in the term ''college credit card agreements'' to mean a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student.

Existing comment 57(a)(1)–1 provides guidance on the definition of ''college student credit card'' which is used in the definition of ''college credit card agreements.'' The proposal would amend this comment to include a prepaid card that is a credit card, or an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, that is issued to any college student under a credit card account under an open-end (not home-secured) consumer credit plan. Proposed comment 57(a)(1)–1 also would provide that the definition of college student credit card includes a prepaid account that is issued to any college student where an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account and the credit account may be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

Existing comment 57(a)(5)–1 provides guidance on the definition of ''college credit card agreements.'' The proposal would amend this comment to include guidance on when agreements related to prepaid accounts would be considered ''college credit card agreements.'' Proposed comment 57(a)(5)–1 would provide that the definition of ''college credit card agreements'' includes a business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement either provides for the addition of open-end (not home-secured) consumer credit plans to previously-issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Proposed comment 57(a)(5)–1 also would provide that the definition of ''college credit card agreements'' includes a business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) an agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

Thus, pursuant to the Bureau's proposed amendments to commentary, § 1026.57(d) would require a card issuer that is a party to one or more agreements in connection with prepaid accounts with linked credit cards, as described above, to submit annual reports to the Bureau regarding those agreements. Under the proposal, a card issuer would be required to submit agreements that provide for the issuance of prepaid accounts to full-time or part-time students even if credit accounts are not linked to the prepaid account when they are issued, so long as credit accounts may be added in connection with the prepaid accounts where the credit accounts may be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

As discussed above, the Bureau believes that the marketing efforts related to a prepaid account, and the inducements given by a card issuer to open a prepaid account, also have an impact on whether consumers may request that a credit card account be linked to the prepaid account when such credit card accounts are offered to them. Thus, even though a prepaid account will not have a credit card account linked to it at the time the prepaid account is opened, if a credit card account may be linked to a prepaid account as described above in the future, the prepaid account at the time of issuance would be a ''college student credit card'' for purposes of § 1026.57(a)(1) if the prepaid account is issued to a college student. As a result, under the proposal, a card issuer that is a party to one or more agreements between the card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) must submit annual reports to the Bureau regarding those agreements if (1) an agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) a credit account may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

57(b) Public Disclosure of Agreements

Section 1026.57(b) provides that an institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card. The Bureau is proposing

[381] See, for example, an August 11 letter from Senator Menendez to CFPB Director Richard Cordray and Department of Education Secretary Arne Duncan urging the agencies to prohibit overdraft fees on student prepaid accounts established in connection with the financial aid process or students' relationships with colleges. The letter is available at *www.menendez.senate.gov/newsroom/press/menendez-calls-for-protections-from-campus-card-trap*.

[382] See *www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html* for further information about the department's negotiated rulemaking.

comment 57(b)–3 to explain that § 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of open-end (not home-secured) consumer credit accounts to previously issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor; or (2) prepaid accounts where a credit account may be added in connection with the prepaid account and that credit account may be accessed by a prepaid card that is a credit card or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, under § 1026.57(b), an institution of higher education must publicly disclose such agreements.

As discussed above, the Bureau believes that the marketing efforts related to a prepaid account, and the inducements given by a card issuer to open a prepaid account, also may have an impact on whether consumers may request that a credit card account be linked to the prepaid account, as discussed above, when such credit card accounts are offered to them. Thus, the Bureau believes that the marketing related to a prepaid account where a credit card feature may be added in connection with the prepaid account as discussed above would constitute marketing of a credit card. Thus, under the proposal, an institution of higher education must publicly disclose agreements for the marketing of prepaid accounts where a credit account may be added in connection with the prepaid account and that credit account may be accessed by a prepaid card that is a credit card or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

57(c) Prohibited Inducements

Section 1026.57(c) provides that no card issuer or creditor may offer a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made: (1) On the campus of an institution of higher education; (2) Near the campus of an institution of higher education; or (3) At an event sponsored by or related to an institution of higher education. The Bureau is proposing to add comment 57(c)–7 to explain that § 1026.57(c) applies to (1) the application for or opening of a credit card account that is being added to previously-issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor; or (2) the application for or opening of a prepaid account where a credit account may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

As discussed above, the Bureau believes that the marketing efforts related to a prepaid account, and the inducements given by a card issuer to open a prepaid account, also may have an impact on whether consumers may request that a credit card account be linked to the prepaid account, as discussed above, when such credit card accounts are offered to them. Thus, any tangible item given to induce college students to apply or open a prepaid account where a credit card feature may be added in connection with the prepaid account as discussed above would also be seen as inducing a college student to apply for or open a credit card account in connection with the prepaid account when it is offered to the consumer. As a result, under the proposal, under § 1026.57(c), a card issuer or creditor would be prohibited from offering a college student any tangible item to induce such student to apply for or open a prepaid account offered by such card issuer or creditor where a credit account may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card or may be accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, if such offer is made: (1) On the campus of an institution of higher education; (2) Near the campus of an institution of higher education; or (3) At an event sponsored by or related to an institution of higher education.

Section 1026.58 Internet Posting of Credit Card Agreements

TILA section 122(d), implemented by § 1026.58, generally requires card issuers to post their card agreements on the internet and to provide those agreements to the Bureau. Separately, as part of this proposal, the Bureau is proposing to adopt similar provisions for prepaid card accounts in Regulation E in proposed § 1005.19. Although the Bureau is not proposing to revise § 1026.58, it does note that the requirements of § 1026.58 and those of Regulation E in proposed § 1005.19 are distinct and independent of one another. In other words, card issuers would have to comply with both as appropriate.

Section 1026.60 Credit and Charge Card Applications and Solicitations

TILA section 127(c), implemented by § 1026.60, generally requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account. 15 U.S.C. 1637(c). Under § 1026.60, card issuers generally are required to provide the following disclosures, among other cost disclosures, on or with the credit or charge card applications or solicitations: (1) The annual percentage rates applicable to the account, for purchases, cash advances, and balance transfers; (2) any annual or other periodic fee, expressed as an annualized amount, that is imposed for the issuance or availability of a credit card, including any fee based on account activity or inactivity; (3) any non-periodic fees related to opening the account, such as one-time membership or participation fees; (4) any minimum or fixed finance charge that could be imposed during a billing cycle; (5) any transaction charge imposed on purchases, cash advances or balance transfers; and (6) any late payment fees, over the limit fees or returned payment fees.

Section 1026.60(a)(5) provides several exceptions to the requirements in § 1026.60 to provide cost disclosures on or with credit or charge card applications or solicitations. Specifically, § 1026.60(a)(5) provides that § 1026.60 does not apply to: (1) Home-equity plans accessible by a credit or charge card that are subject to the requirements of § 1026.40; (2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; (3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used

only at automated teller machines; (4) Lines of credit accessed solely by account numbers; (5) Additions of a credit or charge card to an existing open-end plan; (6) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or (7) Consumer-initiated requests for applications.

As discussed above in the Overview of Regulation Z Proposal section, under the proposal, a person would be a card issuer if the person issues a prepaid card that is a credit card, or issues an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, such a card issuer generally would be required to provide the disclosures required by § 1026.60 on or with a solicitation or application to open a credit plan that is accessed by a prepaid card that is a credit card, or by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

As discussed above, § 1026.60(a)(5)(iv) currently provides that the disclosure requirements in § 1026.60 do not apply to lines of credit accessed solely by account numbers. As discussed further below, the proposal would amend § 1026.60(a)(5)(iv) to provide that this exception does not apply where the account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, under the proposal, a card issuer would have to provide the disclosures required by § 1026.60 on or with a solicitation or application to open a credit or charge card account that will be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.[383]

The proposal also would amend the commentary to § 1026.60(b)(4) and (b)(8) to provide additional guidance on how disclosures related to transaction fees for purchases and for cash advances would have to be provided for credit card accounts that will be accessed by a prepaid card that is a credit card, or by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

60(a) General Rules

Comment 60(a)–1 explains that § 1026.60 generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. This comment provides a cross reference to several relevant provisions of Regulation Z related to credit cards, such as a cross reference to § 1026.60(a)(5) and (e)(2) for exemptions to the disclosure requirements in § 1026.60, to § 1026.60(a)(1) and accompanying commentary for the definition of solicitation, and to § 1026.2(a)(15) and accompanying commentary for the definition of charge card. The proposal would amend this comment to provide a cross reference to proposed § 1026.12(h) that sets forth restrictions on when credit or charge card accounts can be added to previously-issued prepaid accounts. As discussed in more detail in the section-by-section analysis of proposed § 1026.12(h), new proposed § 1026.12(h)(1) would require card issuers to wait at least 30 calendar days after a prepaid card is registered before the card issuer may make a solicitation or provide an application to the holder of the prepaid account to open a credit or charge card account, or open a credit card account for the holder the prepaid account, accessed by a prepaid card that is a credit card or by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

60(a)(5) Exceptions

As discussed above, § 1026.60(a)(5) provides several exceptions to the requirements in § 1026.60 to provide cost disclosures on or with credit or charge card applications or solicitations. Specifically, § 1026.60(a)(5) provides that § 1026.60 does not apply to: (1) Home-equity plans accessible by a credit or charge card that are subject to the requirements of § 1026.40; (2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; (3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; (4) Lines of credit accessed solely by account numbers; (5) Additions of a credit or charge card to an existing open-end plan; (6) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or (7) Consumer-initiated requests for applications. These exemptions are not specifically listed in TILA section 127(c).

In 1989, to implement the disclosure provisions in TILA section 127(c) as amended by the Fair Credit and Charge Card Disclosure Act of 1988,[384] the Board exempted the following credit card accounts from the disclosure requirements set forth in its § 226.5a (which are contained in the Bureau's Regulation Z § 1026.60): (1) Home equity plans accessible by a credit or charge card that are subject to the Home Equity Loan Consumer Protection Act of 1988, Public Law 100–709; (2) overdraft lines of credit tied to asset accounts accessed by check guarantee cards or by debit cards; or (3) lines of credit accessed by check guarantee cards or by debit cards that can be used only at automated teller machines.[385] In the supplemental information to that rulemaking, the Board indicated that a number of commenters raised issues concerning coverage of the proposed rule given the broad definition of the term ''credit card'' in the regulation.[386] Among other things, the Board reported that commenters argued that congressional intent was to require disclosures only for ''traditional'' credit card accounts used primarily to purchase goods and services, and not for other types of accounts that do not fall within such a category or for which the use of a credit or charge card as an access device is merely incidental to the product being offered.[387]

In 1990, the Board added commentary to its Regulation Z § 226.5a (now § 1026.60) to provide that the disclosures set forth in its Regulation Z § 226.5a also did not apply to (1) lines of credit accessed solely by account numbers; (2) the addition of a credit or charge card to an existing open-end plan; or (3) general purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or (4) consumer-initiated requests for applications.[388] In the supplemental information to the 1990 rulemaking, the Board did not explain why it was including these exemptions.

For the reasons discussed below, the proposal would revise the exemption in § 1026.60(a)(5)(iv) that relates to lines of credit accessed solely by account numbers so that this exception would not apply to lines of credit that are accessed only by account numbers that

[383] The Bureau notes that, pursuant to Regulation E proposed § 1005.18(b)(2)(ii)(B), a financial institution also would have to include these disclosures as part of the long form provided before a consumer acquires a prepaid account.

[384] Public Law 100–583, 102 Stat. 2960.

[385] 54 FR 13855, 13857 (Apr. 6, 1989).

[386] *Id.*

[387] *Id.*

[388] *See* 55 FR 13103, 13103 (Apr. 9, 1990).

are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

This proposed revision is intended to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the account using an account number only, and (3) the advance is deposited into the prepaid account. Thus, under the proposal, a card issuer would be required to provide the disclosures set forth in § 1026.60 on or with solicitations or applications to open a credit or charge card account that would be accessed only by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

The Bureau does not believe that TILA section 127(c) dictates that the above credit card accounts be exempted from the disclosures requirements set forth in TILA section 127(c). The Bureau also believes that the cost disclosures in § 1026.60 would be helpful to consumers in deciding whether to open such a credit or charge card account. The Bureau notes that under the current regulation, a card issuer generally would be required to provide the cost disclosures in § 1026.60 on or with solicitations or applications to open a credit or charge card account that is accessed by a prepaid card that is a credit card. The Bureau believes that consumers would benefit from receiving the cost disclosures set forth in § 1026.60 when a credit or charge card is linked to a prepaid account as discussed above, regardless of whether the credit account is accessed by a prepaid card or whether the credit account is assessed by only an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.[389]

60(b)

60(b)(4) Transaction Charges

Section 1026.60(b)(4), which implements TILA section 127(c)(1)(A)(ii)(III), generally requires that card issuers disclose on or with solicitations or applications to open credit or charge card accounts any transaction charge imposed on purchases. 15 U.S.C. 1637(c)(1)(A)(ii)(III). The proposal would add proposed comment 60(b)(4)–3 to provide guidance on when fees would be considered transaction fees for purchases under § 1026.60(b)(4) for prepaid cards that are credit cards. Specifically, proposed comment 60(b)(4)–3 would provide that if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for credit accessed by a credit card that is a prepaid card to make a purchase, that fee is a transaction charge as described in § 1026.60(b)(4). Proposed comment 60(b)(4)–3 would provide that such fees must be disclosed as transaction charges under § 1026.6(b)(4) whether the fee is a flat per-transaction fee to make a purchase, a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions, or a one-time fee for transferring funds from the consumer's credit account to the consumer's prepaid account to cover the shortfall in the prepaid account as a result of a purchase with the prepaid card.

60(b)(8) Cash-Advance Fee

Section 1026.60(b)(8), which implements TILA section 127(c)(1)(B)(i), generally requires that card issuers disclose on or with solicitations or applications to open credit or charge card accounts any fee imposed for an extension of credit in the form of cash or its equivalent. 15 U.S.C. 1637(c)(1)(B)(i). The proposal would add proposed comment 60(b)(8)–4 to provide guidance on when fees would be considered cash advance fees that must be disclosed under § 1026.60(b)(8) for credit card accounts that are accessed by prepaid cards. In addition, proposed comment 60(b)(8)–4 would provide guidance on how cash advance fees must be disclosed. Specifically, proposed comment 60(b)(8)–4 would provide that if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance accessed by a credit card that is a prepaid card, such as a cash withdrawal at an ATM, that fee is a cash advance fee. Under proposed comment 60(b)(8)–4, if the cash advance fee is the same dollar amount as the transaction charge for purchases described in § 1026.60(b)(4), the card issuer may disclose the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances. Proposed comment 60(b)(8)–4 would provide the following three examples of how cash advance fees must be disclosed.

Under proposed comment 60(b)(8)–4.i, the first example would provide that a card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. Under this proposed example, the card issuer assesses a $25 fee for credit accessed by a prepaid card for a cash advance at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, under the proposal, the card issuer must disclose separately a purchase transaction charge of $15 and a cash advance fee of $25.

Under proposed comment 60(b)(8)–4.ii, the second example would provide that a card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. Under this proposed example, the card issuer also assesses a $15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, under the proposal, the card issuer may disclose the $15 fee under a heading that indicates the fee applies to both purchase transactions and ATM cash advances. Alternatively, under the proposal, the card issuer may disclose the $15 fee on two separate rows, one row indicating that a $15 fee applies to purchase transactions, and a second row indicating that a $15 fee applies to ATM cash advances. The Bureau believes that either alternative would provide effective disclosure of the transaction fee for purchases and the cash advance fee.

Under proposed comment 60(b)(8)–4.iii, the third example would provide that a card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer also assesses a fee of $1.50 for out-of-network ATM cash withdrawals and $1.00 for in-network ATM cash withdrawals. The card issuer must disclose the cash advance fee as $16.50 for out-of-network ATM cash withdrawals, indicating that $1.50 is for the out-of-network ATM withdrawal fee, such as "$16.50 (including a $1.50 out-of-network ATM withdrawal fee). The

[389] The Bureau also believes consumers would benefit from receiving these disclosures before they acquire a prepaid account. *See* section-by-section analysis of Regulation E proposed § 1005.18(b)(2)(ii)(B).

card issuer also must disclose the cash advance fee as $16.00 for in-network ATM cash withdrawals, indicating that $1.00 is for the in-network ATM withdrawal fee, such as ''$16 (including a $1.00 in-network ATM cash withdrawal fee).'' The Bureau believes that the proposed disclosure of the total amount of cash advance fees that the consumer will pay for each transaction along with an indication of the separate ATM withdrawal fee that the consumer will pay for each transaction, will allow consumers to more easily understand the cost of each cash advance transaction.

The proposal also would add proposed comment 60(b)(8)–5 to provide guidance on when fees will be considered cash advance fees under § 1026.60(b)(8) with respect to a credit card account accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, proposed comment 60(b)(8)–5 would provide that if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for an extension of credit that will be deposited into a prepaid account that fee is a cash advance fee. This proposed revision is intended to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the account using an account number only, and (3) the advance is deposited into the prepaid account. In this situation, any fee for an advance taken on the line of credit would be disclosed as a cash advance fee under § 1026.60(b)(8) even if the consumer subsequently uses the deposited funds to purchase goods or services at a merchant. This provision would not apply to credit that is accessed by a prepaid card. As discussed above, proposed comments 60(a)(4)–3 and 60(b)(8)–4 would provide guidance on how transaction fees for purchases and for cash advances would be disclosed when charged on credit card accounts accessed by prepaid cards.

Other Topics in the Bureau's Prepaid ANPR

In its Prepaid ANPR, the Bureau sought comment on several topics that it is not proposing to address in this rulemaking, including how credit reporting and savings accounts relate to prepaid accounts.

Credit Reporting

In the Prepaid ANPR, the Bureau sought input and data on the efficacy of credit reporting features that some GPR cards claim to offer to enable consumers to improve or build credit and on whether regulatory provisions should address how such services are marketed to consumers. Numerous comments from industry, trade associations, and consumer groups pointed out that, because GPR cards typically do not involve the extension of credit, none of the three primary credit reporting agencies factor prepaid card-related payment histories into their credit scoring models. Several commenters suggested that the Bureau consider issuing rules to prevent deceptive credit building claims or to establish reasonable guidelines on accurate disclosures. Others suggested it was premature to issue regulations until there is a well-established basis for using such information to determine creditworthiness and noted that, in the interim, the Bureau has authority to police misleading or deceptive claims via its UDAAP authority.

Based on its understanding of the current state of the market, the Bureau does not believe it is appropriate to take further action on credit reporting in the context of this proposal although the Bureau does note that it has concerns about deceptive marketing regarding claims of a credit building aspect to certain prepaid accounts. The Bureau does, however, continue to seek comment on recent developments in this area and whether future action might be warranted.

Savings Features

In the Prepaid ANPR, the Bureau noted that, at the time, most GPR cards did not offer a savings account associated with the card and sought input on the costs, benefits, and consumer protection issues related to savings features offered with GPR cards. A savings account feature could allow a consumer to save or separate funds, such as for budgeting purposes, and potentially earn interest on such funds. Many industry, trade association, and consumer group commenters remarked that savings accounts are or can be beneficial to consumers and should be encouraged by the Bureau but not be made mandatory. Several commenters noted that such accounts, depending on how they are structured, are generally already subject to Regulation E as well as Regulation DD. A few consumer group commenters suggested that fees should be prohibited on such linked savings accounts, while several industry commenters noted that implementing a savings feature or linked savings account can be very expensive and is difficult for financial institutions to do.

The Bureau agrees with the majority of commenters that both linked savings accounts and savings features associated with prepaid accounts can be beneficial to consumers. Such savings programs may allow participating consumers to better manage their current spending and set aside funds for planned or unexpected expenses. Further, research suggests that having savings and engaging in regular saving activity each can contribute to both short-term financial stability and medium- to long-term economic mobility, even when the amounts are small.[390] Adding savings features may help consumers establish long-term relationships with financial services providers that facilitate effective money management. Finally, one non-profit commenter to the Bureau's ANPR noted that results from its qualitative research using focus groups with consumers who purchase and use prepaid debit cards found that an overwhelming majority of focus group participants want a savings feature on their GPR prepaid cards.

Nevertheless, the Bureau is not taking regulatory action at this time on this issue and hopes that financial institutions will continue to expand their offerings in this area, in such a way as to provide protections and opportunities for consumers. The Bureau remains interested in learning more about these products and therefore requests comment on recent developments regarding such features and whether future regulation might be warranted.

Proposed Effective Date

Except as modified by proposed § 1005.18(h), discussed above, the Bureau is proposing that this rule take effect nine months after publication of a final rule in the **Federal Register**. As is explained in proposed § 1005.18(h)(2), the Bureau proposes an exception to this nine month implementation period; specifically that after12 months, all prepaid accounts and related packaging, access devices, and other physical materials that are offered, sold, or otherwise made available to consumers in connection

[390] Signe-Mary McKernan, Caroline Ratcliffe & Katie Vinopal, Urban Institute, *Do Assets Help Families Cope with Adverse Events?* (Nov. 2009), *available at http://www.urban.org/uploadedpdf/411994_help_family_cope.pdf*; Diane R. Calmus, The Heritage Foundation, *Improving Economic Mobility Through Increased Savings,* (Dec. 21, 2012) *available at http://www.heritage.org/research/reports/2012/12/improving-economic-mobility-through-increased-savings.*

with a prepaid account must comply with the requirements of this section. As discussed in the Section-by-Section Analysis of proposed § 1005.18(h)(1), the Bureau believes that nine months strikes the appropriate balance between providing consumers with necessary protections while giving financial institutions adequate time to comply with all aspects of this proposal. The Bureau notes that many providers already comply with many of the new requirements proposed herein.[391] The Bureau seeks comment on its approach to the effective date of this proposal, whether it should be simplified and whether the proposed time periods are appropriate, should be lengthened, or should be shortened.

Section 1022(b)(2) of the Dodd-Frank Act

A. Overview

In developing the proposed rule, the Bureau has considered the potential benefits, costs and impacts.[392] The Bureau requests comment on the preliminary discussion presented below as well as submissions of additional data that could inform the Bureau's consideration of the potential benefits, costs, and impacts of the proposed rule. The Bureau has consulted, or offered to consult, with the prudential regulators, the Department of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission, regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

As discussed above, the Bureau is proposing to amend Regulation E and Regulation Z, as well as the official commentary to those regulations. Regulation E implements the Electronic Fund Transfer Act (EFTA), and Regulation Z implements the Truth in Lending Act (TILA). The proposal would bring a wide range of general use prepaid products within a unified regulatory regime for ''prepaid accounts'' by expressly defining them as accounts subject to Regulation E. Additionally, the proposal would subject credit features linked to prepaid accounts to Regulation Z. Further, the Bureau also proposes to modify certain Regulation E provisions as they would apply to prepaid accounts and certain existing Regulation E provisions that currently apply to payroll card accounts and government benefit accounts.[393] For those prepaid accounts that offer overdraft services or other credit features in connection with the account, the Bureau is proposing that such accounts are additionally subject to relevant provisions in Regulation Z and is proposing to modify certain provisions of Regulations E and Z accordingly. In proposing to apply the consumer protections in Regulation E to a broader set of prepaid accounts, the Bureau is furthering the statutory purposes of EFTA, which include providing a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems and providing individual consumer rights. In addition, the Bureau believes that applying the consumer protections articulated in Regulation Z to overdraft services offered in connection with prepaid accounts conforms to TILA's statutory purposes, which include assuring a meaningful disclosure of credit terms, avoiding the uninformed use of credit, and protecting consumers against inaccurate and unfair billing and credit card practices.

B. Provisions To Be Discussed

With respect to each major provision of the proposed rule, the discussion considers the benefits and costs to consumers and covered persons and, in certain instances, considers other impacts. Specifically, the discussion below considers the following major proposed provisions:

1. The establishment of certain disclosures that financial institutions would be required to provide to consumers (or, in certain circumstances, provide consumers access to) prior to the consumer's acquisition of a prepaid account;

2. The application of Regulation E's periodic statement requirement to prepaid accounts and the establishment of an alternative to this requirement that would require financial institutions to give consumers access to certain types of account information at no cost to the consumer;

3. The extension of Regulation E's limited liability and error resolution regime, including provisional credit requirements, to all prepaid accounts that have been through a customer identification and verification process;

4. The requirement that all issuers of prepaid accounts post their prepaid account agreements on their Web sites or, in limited circumstances, respond to consumers' requests for written copies of their agreements and, with some exceptions, submit copies of their agreements to the Bureau on a quarterly basis; and

5. The modification and application of particular provisions in Regulation E and open-end credit provisions in Regulation Z to prepaid accounts that offer overdraft services or other credit features in connection with the account.

This discussion also addresses certain alternative provisions that were considered by the Bureau in the development of the proposed rule.

In considering the relevant potential benefits, costs, and impacts, the Bureau has utilized the available data discussed in this preamble and has applied its knowledge and expertise concerning consumer financial markets. When available, the Bureau has used the economic analyses that it regards as most reliable and helpful to consider the relevant potential benefits, costs, and impacts of the proposal. However, the Bureau notes that, in some instances, there are limited data available with which to quantify the potential benefits, costs, and impacts. For instance, prepaid account providers that are presently applying Regulation E's limited liability or error resolution provisions, including provisional credit, do not generally publicize information regarding the incremental costs associated with these activities. Moreover, some potential benefits are difficult to quantify.

General economic principles, considered in combination with available quantitative information, provide insight into the potential benefits, costs, and impacts arising from the proposed rule. Where possible, the Bureau has made quantitative estimates based on these principles as well as available data. However, in light of data limitations, the Bureau generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule.

C. Baseline for Consideration of Benefits and Costs

The baseline for this discussion is the current market for prepaid accounts.[394] However, in order to more fully inform

[391] *See, e.g.,* Study of Prepaid Account Agreements.

[392] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026; and the impact on consumers in rural areas.

[393] The requirements for government benefit accounts are described in § 1005.15. Proposed § 1005.2(b)(3)(iii) would state that a government benefit account is a prepaid account.

[394] The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and the most appropriate baseline for that particular rulemaking.

the proposed rulemaking, the Bureau also discusses potential future impacts relative to how the market might evolve absent the proposed rule. This baseline considers both the existing regulatory structure as well as the economic attributes of the relevant market.[395]

With respect to proposed provisions regarding access to account information, limited liability, and error resolution protections, the Bureau is generally proposing to extend existing provisions of Regulation E, as they apply to payroll card accounts, to prepaid accounts. Since payroll card accounts and prepaid accounts that receive Federal payments (and thus are subject to the FMS Rule) are presently subject to provisions of Regulation E (as they apply to payroll card accounts) that address consumer access to account information, limited liability, and error resolution protections, financial institutions currently are required to offer these protections to some consumer accounts that would be covered by the proposed rule. In addition, the proposed rule would amend similar provisions of Regulation E applicable to government benefit accounts to make these provisions generally conform to proposed requirements for other types of prepaid accounts. The existing provisions governing access to account information for government benefit accounts differ somewhat from those applicable to payroll card accounts.[396] *See* existing § 1005.15(c) and (d).

Given that many of the proposed requirements are consistent with current industry practice, the benefits, costs, and impacts arising from the proposal are moderated relative to those that would be experienced if current industry practice were significantly different from the proposal's requirements. As discussed above, the Bureau's Study of Prepaid Account Agreements suggested that many covered providers are already fully or partially implementing the proposed requirements pertaining to access to account information, limited liability, and error resolution regardless of whether they are currently required to do so. Providers may already be fully or partially implementing the proposed requirements with respect to limited liability and error resolution due, in part, to the need for issuers to comply with payment card association network rules in addition to the existing Federal regulatory requirements described above.[397]

In addition to these requirements, the proposal includes requirements for financial institutions and creditors that offer overdraft services or other credit features in connection with prepaid accounts. The Bureau's understanding is that, at present, overdraft services are offered in connection with a small number of products that would be considered to satisfy the proposed definition of prepaid account.[398] However, one of the largest providers of prepaid accounts offers an overdraft service in connection with its prepaid accounts (which include GPR cards and payroll card accounts), so the number of prepaid accounts currently eligible for overdraft is not negligible.[399] The credit limits extended to consumers for these overdraft services are generally of modest size (*e.g.,* $100).[400]

The Bureau believes that providers of overdraft services offered in connection with these prepaid accounts do not presently comply with all of the practices that would be required by the proposal. For those prepaid accounts that offer overdraft services, the Bureau understands that providers currently require consumers to opt-in to the service and that they condition eligibility on receipt of a regularly-occurring direct deposit.[401] When funds are added to a prepaid account that has an associated overdraft service, the Bureau understands that these funds are generally applied automatically to any negative balance (including to repay fees) before the consumer may access the remaining funds.[402] The Bureau understands that providers that presently offer these overdraft services in connection with prepaid accounts have adopted program rules designed to discourage persistent use of the overdraft feature, such as capping the number of fees that may be incurred in a month.[403] However, there is presently no Federal regulatory requirement that providers limit the frequency with which overdraft services are used or the

[395] As discussed above, several Federal regulatory regimes, including those regarding consumer protection; receipt of Federal payments onto prepaid cards; interchange fees; and prevention of money laundering, terrorist financing, and other financial crimes, apply to some or all types of prepaid accounts or to transactions involving these accounts. Prudential regulators have also issued guidance pertaining to the application of their rules to prepaid cards, program managers, and issuing financial institutions. In addition, the benefits, costs, and impacts that would arise as a consequence of the proposed rule are attenuated to the extent that certain provisions are already required under State law.

[396] Specifically, the alternative to the periodic statement described in existing § 1005.15(c) does not require that an electronic history of the consumer's account transactions be made available to the consumer.

[397] As discussed above, payment card association network rules impose some form of zero liability protections for prepaid cardholders in certain circumstances. *See, e.g., Visa Inc., Zero Liability, http://usa.visa.com/personal/security/zero-liability.jsp#anchor_2* (last visited Nov. 3, 2014). *See, e.g., MasterCard Inc., Zero Liability Protection, http://www.mastercard.us/zero-liability.html* (last visited Nov. 3, 2014).

[398] The Study of Prepaid Account Agreements suggested that some prepaid programs, according to their terms and conditions, reserve the right to impose a fee for a negative balance on a prepaid account. (These programs' agreements typically state that the cardholder is not permitted to spend beyond the balance in the prepaid account, but if circumstances were to occur that cause the balance to go negative, a fee will or may be imposed. Some agreements state that repeated attempts to spend beyond the card balance will or may result in the prepaid account being closed). Roughly 10 percent of reviewed agreements noted such a charge. Based on its outreach, the Bureau has doubts as to whether, in practice, these charges are assessed and requests comment regarding current industry practice.

In addition, one source suggests that overdraft fees may be collected by a handful of government benefit card programs, but the Bureau is not certain whether such fees are currently being assessed as it understands several such programs have ceased charging overdraft fees, and the aggregate value of these fees is relatively modest. *See* Bd. of Governors of the Fed. Reserve Sys., *Report to Congress on Government-Administered, General Use Prepaid Cards,* at 9, (July 2014), *available at http://www.federalreserve.gov/publications/files/2014_Prepaid_Cards_Final.pdf* (showing $2 million in overdraft fees in 2013).

[399] NetSpend is a significant provider of prepaid accounts. *See* Aite Grp. LLC, *The Contenders: Prepaid Debit and Payroll Cards Reach Ubiquity,* at 23–24 (Nov. 2012). A recent news article reported that six percent of NetSpend's customers regularly use overdraft. *See* Suzanne Kapner, *Prepaid Plastic is Creeping into Credit,* Wall Street J. (Sept. 5, 2012), *http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602.* In addition, a larger percentage of accounts would potentially be eligible for their overdraft program. A recent financial filing suggested that NetSpend had 3.4 million active cards as of June 30, 2014 and 47 percent of those active cards had direct deposit. *See* Total Sys. Serv. Inc., Form 10–Q, at 28, *available at http://www.sec.gov/Archives/edgar/data/721683/000119312514300851/d737574d10q.htm* (for the quarterly period ended June 30, 2014)

[400] *See* Suzanne Kapner, *Prepaid Plastic is Creeping Into Credit,* Wall Street J. (Sept. 5, 2012), *http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602.*

[401] *See* Kansas City Fed Study, at 9.

[402] The Treasury FMS rule, described above, prohibits prepaid cards from having an attached line of credit if the credit agreement allows for the automatic repayment of the loan from a card account triggered by the delivery of the Federal payment into the account (31 CFR 210(b)(5)(i)(C)). Certain State laws subject some government benefit accounts to similar provisions (*see* CA AB 1280 and CA AB 2252). In addition, payroll card accounts are currently subject to Regulation E's compulsory use provision.

[403] *See* Suzanne Kapner, *Prepaid Plastic is Creeping Into Credit,* Wall Street J. (Sept. 5, 2012), *http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602*; *see also* NetSpend Corp., Amended Terms for Your Cardholder Agreement, *https://www.netspend.com/account/overdraftTerms.m* (last visited Nov. 11, 2014) (overdraft terms and conditions).

frequency with which a consumer may incur overdraft-related fees.

The Bureau believes that additional providers may be considering offering credit features, such as an overdraft service, in connection with prepaid accounts. This suggests that there could be increased consumer access to these products in the future. The proposed rule would provide clarity regarding the terms on which overdraft services and other credit features may be offered in connection with prepaid accounts. The proposed provisions would help to ensure that such credit would be offered to consumers in a transparent manner and that consumers would obtain certain important protections.

D. Coverage of the Proposal

The provisions of the proposed rule would apply to any account that meets the definitional criteria described in proposed § 1005.2(b)(3). Covered persons would include prepaid account issuers who may work with program managers or other industry participants in marketing, establishing, and maintaining these accounts. As discussed above, prepaid account issuers may choose to perform all of the functions required to manage a prepaid program, including marketing prepaid accounts directly to consumers. More commonly, however, prepaid account issuers elect to take a more limited role, leaving program management to others although the scope of such roles may vary.[404] In addition to the requirements specified in Regulation E, persons offering overdraft or other credit features in connection with prepaid accounts would also be subject to the provisions of Regulation Z governing extensions of credit. These persons may or may not be distinct from the prepaid account issuer or the prepaid account program manager. For the purpose of discussing the benefits and costs of the proposed rule, the Bureau considers potential impacts on both prepaid account issuers and program managers (who would both be directly affected by the proposed provisions) and discusses burdens without allocating them among market participants.[405]

E. Potential Benefits and Costs to Consumers and Covered Persons

In proposing to apply the consumer protections in Regulations E and Z to a wider group of accounts, the Bureau intends to reduce consumer uncertainty regarding responsibilities and liabilities among market participants. The Bureau also aims to lessen consumer risk associated with the use of prepaid accounts that do not currently comply with the proposed protections or that would not comply in the future, absent the adoption of the proposed rule. In particular, the Bureau is concerned that certain consumers with prepaid accounts that do not currently offer the protections provided by Regulation E may incorrectly believe that these accounts have such protections. The Bureau believes that it is likely that some consumers do not realize that, under current Federal law, their prepaid accounts may offer fewer protections than substitute products. Both prepaid cards and debit cards provide consumers with access to their own funds and have similar functionalities and appearances, which may encourage the perception that the accounts associated with such cards have similar protections. With the possible exception of certain provisions applicable to overdraft services and other credit features offered in connection with prepaid accounts, the proposed rule is not anticipated to meaningfully reduce consumer access to consumer financial products and services.

The proposed requirements would address the potential under-provision of information about prepaid accounts to consumer holders of these accounts by the private sector and the possible exercise of market power by prepaid account providers.[406] The socially optimal amount of information about a prepaid account depends on the cost to prepaid providers (or third party information providers) of acquiring and providing product information and the benefit to consumers from improved understanding and choice.[407] Prepaid account providers have strong incentives to make consumers aware of generally attractive product features, such as functionality that may be used by consumers without a fee. They have less incentive to identify and highlight unattractive product features, such as high fees that may be associated with certain types of activities, even if those features are utilized frequently by prepaid account holders.[408] In principle, third parties could try to generate (or approximate) this information independently. However, simply collecting, synthesizing, and providing product information for a fee likely would not be profitable since the information generally would be non-excludable; that is, it could not be withheld from consumers who did not pay for it.[409] Information is generally a public good in that it is both non-rival, meaning that it may be used without reducing the amount available for others, and non-excludable. As with any other public good, standard microeconomic analysis establishes that this information would be under-produced by the private sector.[410]

In addition, consumers rely on providers of prepaid accounts to offer services on an ongoing basis, including access to account information and error resolution. Although the account terms and conditions may articulate the provider's commitments with respect to these features, many consumers may not review these documents in advance and may not be able to anticipate their needs accurately even if they did. In addition, the quality with which these functions are performed is difficult or impossible to observe in advance. While a provider would lose customers and the reputation of its products would suffer if it consistently provided poor service, these long-term consequences may not protect consumers sufficiently against incentives for short-term gain.[411] Having opened an account, the costs incurred

[404] The issuer typically enters into a contract with the program manager to provide the association bank identification number for the program and to monitor regulatory compliance in exchange for fee income and indemnification from risk. *See* 2012 FRB Philadelphia Study, at 10.

[405] With respect to overdraft services or credit features offered in connection with prepaid accounts, the impacts on creditors are also considered. The creditor may be the prepaid account issuer, program manager, or another person.

[406] Classically, the issues discussed here would be considered to be market failures.

[407] In general, at the social optimum, the benefit to consumers from additional information would exactly equal the additional cost to providers of providing that information.

[408] Recent research covering prepaid programs that represent approximately 90 percent of the GPR card market (in terms of number of cards) shows that the majority of the market sampled (70 percent) provides explicit tips regarding how to avoid fees and minimize the costs associated with using the card. However, marketing and communication to promote positive consumer use is identified as an area for improvement. *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 11 (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.*

[409] In contrast, personalized estimates of the cost of using a product or product recommendations based on private information would not be a public good. However, charging customers a fee for this information might not be possible if other providers receive revenue from industry or other sources and do not charge for information that appears to be comparable.

[410] *See, e.g.,* Joseph E. Stiglitz, *Market Failure, in* Economics of the Public Sector, (W.W. Norton & Co., Inc., 3d ed. 2000).

[411] The relationship between reputation and quality is highly complex, even under competition; *see* Rachel Kranton, *Competition and the Incentive to Produce High Quality,* 70 Economica 385 (2003). For a general survey of reputation and quality, *see* Heski Bar-Isaac &Steve Tadelis, *Seller Reputation,* 4 Foundations and Trends in Microeconomics 273 (2008).

by a consumer to change prepaid account providers may serve as an additional friction that decreases a provider's incentive to provide high quality ongoing services.

The proposed disclosure formatting requirements and the provisions requiring the posting of prepaid account agreements are designed to decrease consumer search costs, which can be a source of market power for providers. Consumers generally incur costs, in terms of time or money, in order to find and understand the price and quality of a particular product before purchasing it. Consumers have less of an incentive to shop around and to compare various products when the costs associated with performing these comparisons are high. Prepaid account providers can obtain market power when consumers are unwilling to incur these search costs to learn about available options. A sufficiently inexpensive reduction in these costs can benefit consumers and enhance efficiency.[412] In the context of the proposed rule, disclosure formatting requirements that are relatively inexpensive and, through standardization, reduce the cost of finding and understanding critical information about prepaid accounts address this market failure. It is worth noting that the benefits of lower search costs extend beyond those consumers who actually search since all consumers of the product potentially benefit from any resulting reduction in prices.

Although the Bureau's Study of Prepaid Account Agreements suggested that most prepaid account programs reviewed already generally offer the proposed limited liability and error resolution protections, the Bureau is concerned that as more consumers adopt and use prepaid accounts, the number of consumers at risk of an unexpected loss could increase. Most prepaid accounts generally leverage large payment network rails and, as such, are widely accepted by a broad range of merchants. A survey conducted by the Board in 2013 found that 15 percent of respondents reported using a general purpose prepaid card in the past 12 months.[413] Among those who reported having a general purpose prepaid card or a payroll card, 38 percent reported that it was reloadable, and about half of those respondents who reported that they had a reloadable general purpose or payroll card reported that they or someone else added money to their card in the past month.[414] In the prior wave of the survey, 10.8 percent of respondents had used a ''general purpose prepaid card that you can add funds to'' in the past 12 months.[415] Another survey conducted in May 2014 found that 16 percent of respondents had used a ''prepaid card'' that was not a gift card in the last 12 months.[416] A survey performed by the FDIC in 2013 found that 12 percent of households had ever used prepaid cards, 7.9 percent had used prepaid cards in the last 12 months, and 3.9 percent had used prepaid cards in the last 30 days; further, use was more common among households that were unbanked or underbanked.[417] Another study found that five percent of adults use prepaid cards at least once a month.[418]

Although there are many uses for prepaid accounts, covered accounts may be designed, implemented, and marketed as substitutes for traditional checking accounts. According to one study, of the five percent of adults surveyed that reported using a prepaid card at least once a month, 41 percent did not currently have a checking account, implying that roughly two percent of the adult population uses a prepaid card monthly and does not have a checking account.[419] According to a survey conducted by the Board, 1.6 percent of respondents reported that either they or their partner had a reloadable prepaid card and did not have a checking, savings, or money market account in 2012.[420] Prepaid accounts offer individuals who do not have access to traditional debit accounts or credit accounts a means to perform electronic fund transfers. These accounts enable consumers who may not otherwise have access to an electronic payment mechanism to make purchases from online merchants and others who do not accept cash. Additionally, prepaid accounts provide individuals who do not have access to traditional checking accounts a means of storing funds that can be more secure than holding cash. Prepaid accounts also offer consumers the ability to accept payments of wages and/or benefits via direct deposit; for the unbanked, this can serve as an alternative to relying on a check cashing provider.

Although consumers may access funds through certain types of prepaid accounts that are currently subject to Regulation E, some consumers regularly deposit funds into prepaid accounts that are not currently subject to Regulation E.[421] Consumers may use these prepaid accounts instead of traditional checking accounts, holding these prepaid accounts for extended periods and loading significant portions of their available funds into such accounts. If their prepaid account provider does not offer limited liability and error resolution protections (including provisional credit), these consumers may be at risk of an unexpected loss or a delay in access to funds in the event of an error or unauthorized transfer. The proposed rule would reduce the risk associated with prepaid accounts for these consumers by requiring that providers offer a limited liability and error resolution regime that includes

[412] *See* Dale O. Stahl II, *Oligopolistic Pricing with Sequential Consumer Search,* 79 Am. Econ. Rev. 700 (1989).

[413] *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2014,* at 8 (Mar. 2014), *available at http://www.federalreserve.gov/econresdata/mobile-devices/files/consumers-and-mobile-financial-services-report-201403.pdf.* (2014 Mobile Report). General purpose prepaid cards are one type of product that would be subsumed within the proposed rule's definition of prepaid account. As described above, payroll card accounts are already required to comply with Regulation E's limited liability and error resolution regime.

[414] *See* 2014 Mobile Report at 48 tbl.C.9 & C.10. Note that this implies that roughly three percent of respondents had a general purpose prepaid card or payroll card which they or someone else had (re)loaded in the past month.

[415] *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2013,* at 53 tbl C.12 (Mar. 2013), *available at http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201303.pdf.*

[416] *See* GFK, *GfK Prepaid Omnibus Research Findings*, at 6 (2014), *available at http://www.nbpca.org/~/media/2519B8BADB1B4388BA5F11C511B3ACAE.ashx.* The definition of prepaid card in this survey appears to have included products that would not be covered by the proposed definition of prepaid account. *Id.* at 7.

[417] *See* Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households,* at 29–30 (Oct. 2014), *available at https://fdic.gov/householdsurvey/2013report.pdf.*

[418] *See* The Pew Charitable Trusts, *Why Americans Use Prepaid Cards: A Survey of Cardholders' Motivations and Views,* at 1 (Feb. 2014) (2014 Pew Survey), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsSurveyReportpdf.pdf.* For the purpose of this survey, respondents were explicitly told not to include gift cards, rebate cards, credit cards, or phone cards.

[419] *See* 2014 Pew Survey, at 1, 7.

[420] *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2013,* at 5 (Mar. 2013), *available at http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201303.pdf.* This statistic is derived from the following: ''In 2012, the share of unbanked consumers [meaning those who reported that neither they nor their spouse or partner had a checking, savings, or money market account] declined to 9.5 percent of the population. Adopting a more expansive definition of being banked that includes use of a reloadable prepaid card, the share of consumers who are unbanked declined . . . to 7.9 percent in 2012.'' The 2014 Mobile Report, which summarizes a survey conducted in 2013, did not permit the Bureau to calculate this statistic using information from the later survey.

[421] As discussed above, payroll card accounts and government benefit accounts are currently subject to Regulation E. The FMS Rule ensures that the protections that apply to payroll card accounts under Regulation E also apply to any prepaid cards that receive Federal payments.

provisional credit once cards are registered.

In addition, the proposed rule would aid consumers in properly assessing the risks and costs associated with using these products by requiring more comprehensive and standardized information disclosures. Standardization of information disclosures may permit consumers to make better informed comparisons among products when they are choosing a prepaid account. To the extent that this information is not already provided, more comprehensive disclosure of account information may help consumers to understand the financial costs associated with using these products and may aid in the recognition of errors and the exercise of error resolution rights. As discussed below, with some exceptions, the costs incurred by covered financial institutions arising from the standardization of information disclosure are one-time implementation costs, and many providers of covered accounts presently implement several of the provisions relating to communication of account information, including providing access to account history information.

The proposed rule would generally also require issuers to treat an overdraft service or other credit feature offered in connection with a prepaid account as a credit card account subject to the provisions of Regulation Z that apply to such accounts.[422] As a result, consumers using prepaid accounts with associated credit card plans would be guaranteed certain important consumer protections. Specifically, persons offering overdraft services or other credit features in connection with prepaid accounts would be required to comply with the provisions governing application and disclosure that apply to credit cards and would be subject to certain fee and payment restrictions, among other requirements.

Further, the proposed rule would modify Regulation E to require that financial institutions offering prepaid accounts that could be associated with a credit card feature disclose the fees associated with the credit card plan to consumers in the prepaid account's pre-acquisition disclosures and in the prepaid account agreement. In addition, financial institutions would be prohibited from providing a solicitation or an application to a consumer to open an associated credit card account prior to 30 calendar days after the prepaid account has been registered, and they would be prohibited from offering terms and conditions, applicable to transactions solely accessing the prepaid account, that differ depending on whether the consumer elects to link a credit feature to a prepaid account.

Although few providers of prepaid accounts currently offer overdraft services or other credit features in connection with prepaid accounts, the Bureau believes that such product offerings could become more widespread in the future. Therefore, the Bureau believes that it is important to ensure that these products are structured so that consumers receive appropriate protections when offered prepaid accounts that include credit features. By proposing to put requirements in place now, the Bureau hopes to mitigate costs to consumers and providers that may occur if these products become more prevalent and the proposed protections are not in place.

To assess the potential impacts of the proposed rule on consumers and covered persons, the Bureau separately discusses the benefits and costs associated with each major proposed provision. For clarity of discussion, costs arising from compliance burdens that would be imposed on providers by the proposed rule will be discussed under the subheading ''Benefits and Costs to Covered Persons'' for each major proposed provision. The proposed provisions may impose one-time implementation costs and may affect ongoing operational costs. Both of these types of costs may be fixed or variable.[423] Economic theory predicts that fixed cost increases will be absorbed by providers. However, consumers may be adversely affected by increases in these costs to the extent these cost increases prompt current providers of prepaid accounts to exit the market or deter entry by new providers in the future. This could result in consumers having more restricted choices than they would otherwise have. In certain situations, a decrease in the number of market participants could better enable those remaining providers to exercise market power, resulting in higher prices for consumers, decreased product quality, or both.

With respect to variable costs, the ability of providers to recoup cost increases by charging consumers higher prices for covered products depends on the relative elasticities of supply and demand for the product (*e.g.,* how responsive the quantity supplied by providers is to a price change relative to how responsive the quantity demanded by consumers is to a price change) and the extent of competition in the market. The burdens will ultimately be shared by both providers and consumers, with the larger share of the burden falling on the party that is less responsive to a price change.

It is worth noting that the relative elasticities of supply and demand can vary across products that would be covered by the proposed rule and may be influenced by the presence of substitute products as well as the availability of information (which would influence the perceived availability of substitute products).

1. Establishing Certain Disclosures That Providers Must Give to Consumers

The proposed rule would require two new, pre-acquisition disclosures; extend existing Regulation E disclosure requirements to prepaid accounts; and require new disclosures to be made on prepaid account access devices. Under the proposal, newly-printed disclosures would need to be compliant after nine months, and, financial institutions would be required to be in full compliance with the rule's disclosure requirements after twelve months. *See* proposed § 1005.18(h).

Proposed § 1005.18(b)(1) would require that a financial institution must provide a ''short form'' disclosure and a ''long form'' disclosure before a consumer acquires a prepaid account. Proposed § 1005.18(b)(2) through(6) would establish the content, form, and timing of these two disclosures. Proposed § 1005.18(b)(2)(i) would set forth the information a financial institution would be required to provide on the short form disclosure. The short form disclosure would include a ''static'' portion that would be disclosed for all prepaid account products. In addition to certain other fees, this static portion would have a ''top-line'' component that highlights at the top of the form, in a large font-size, four types of fees (a periodic fee, per purchase fees, ATM withdrawal fees, and a cash reload fee) that the Bureau believes to be the most important to consumers when shopping for a prepaid account. The short form disclosure would also include an ''incidence-based'' portion that would require inclusion of up to three additional fees. These would be

[422] A credit plan that is accessed by a prepaid card would not be a credit card account where the credit is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. Such credit plans would not be subject to Regulation Z, but would be subject to Regulation E. See section-by-section analysis of § 1026.2(a)(15) and (17).

[423] Fixed costs are those costs that do not depend on the number of prepaid accounts offered by the provider.

the fees that consumers incurred most frequently during the prior 12-month period when using a given prepaid account product. The fees disclosed could therefore vary across products. If the amount of a fee listed in the short form disclosure could vary, a financial institution would have to disclose the highest fee it could impose for utilizing the service associated with the fee, along with a symbol, such as an asterisk, and explanatory text indicating that the fee could be lower. A financial institution would be required to use the same symbol and explanatory text for all fees that could be lower.

The short form disclosure would also state the number of other fees that apply to the product that are not disclosed on the short form disclosure; an instruction for the prepaid account holder to register his or her prepaid account in order to protect his or her funds; the URL for the Web site of the Consumer Financial Protection Bureau; and a statement regarding whether the product offers overdraft services or other credit features. In most cases, the short form would also disclose if a prepaid account is not eligible for FDIC (or NCUSIF) pass-through deposit (or share) insurance. A short form disclosure for a payroll card account or government benefit account would also include a notice at the top of the form, when applicable, that consumers are not required to accept such an account.

Proposed § 1005.18(b)(2)(ii) would set forth the information a financial institution would be required to provide on the long form disclosure. The long form disclosure would set forth all fees imposed in connection with a prepaid account and their qualifying conditions. Financial institutions would be required to provide consumers with the long form disclosure prior to acquisition of a prepaid account, unless that account is acquired orally by telephone or in a retail store, as discussed below. The long form disclosure would also include the telephone number, Web site, and address of the person or office that the consumer may contact to learn about the terms and conditions of the prepaid account, to call for a balance inquiry, to request or to notify the person or office when a consumer believes that unauthorized electronic fund transfer has occurred; the disclosure described above regarding FDIC pass-through or NCUSIF share insurance, when appropriate; and the URL of the Web site and the telephone number of the Consumer Financial Protection Bureau that consumers could use to report a complaint in connection with a prepaid account. Finally, if at any point a credit plan may be offered to any holder of a given prepaid account, then the financial institution would be required to include in that prepaid account's long form disclosures the disclosures described in Regulation Z 12 CFR 1026.60(a), (b) and (c).

The proposed rule would also set forth requirements for how the short form and long form disclosures must be presented. Specifically, proposed § 1005.18(b)(3) would set forth general form requirements for written, electronic, and oral disclosures; provide requirements regarding whether these disclosures should be in a retainable form; and set forth parameters for the tabular form in which the disclosures must be presented, including specific requirements for short form disclosures presenting multiple service plans. Proposed § 1005.18(b)(4) would provide specific formatting requirements on grouping, prominence, and size.

If a financial institution principally uses a foreign language on a package, when speaking to a consumer by telephone, in person, or on a Web site consumers utilize to acquire a prepaid account, proposed § 1005.18(b)(6) would require financial institutions to provide the short and long form disclosures in that same foreign language. The financial institution would also be required to provide the long form disclosure in English upon the consumer's request or on its Web site where it provides the long form disclosure in a foreign language.

The proposed rule would create exceptions to the proposed pre-acquisition disclosure regime if the prepaid account is acquired in a retail store or orally by telephone. In a retail store, financial institutions would be required to provide the short form disclosure before the consumer acquires a prepaid account, but they could provide the long form disclosure after the consumer acquires a prepaid account as long as certain conditions are met. *See* proposed § 1005.18(b)(1)(ii).

Before a consumer acquires a prepaid account orally by telephone, a financial institution must disclose the short form information that would be required by proposed § 1005.18(b)(2)(i). However, a financial institution could disclose the long form content required by § 1005.18(b)(2)(ii) after the consumer acquires a prepaid account provided that the financial institution communicates to the consumer, before the consumer acquires the prepaid account, that the information required to be disclosed by § 1005.18(b)(2)(ii) is available by telephone or via a Web site.

The proposed rule would require modifications to the initial disclosures required by Regulation E. Regulation E § 1005.7(b) currently requires financial institutions to provide certain initial disclosures when a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account. The Bureau is proposing that these existing disclosure requirements be extended to prepaid accounts;[424] however, the Bureau is further proposing (*see* proposed § 1005.18(f)) to modify the initial disclosure of fees requirement in § 1005.7(b)(5) for prepaid accounts to require that in addition to disclosing any fees imposed by a financial institution for electronic fund transfers or the right to make such transfers, the financial institution must also provide all other fees imposed by the financial institution in connection with a prepaid account, in the form of a table substantially similar to proposed sample form A–10(e) in appendix A.

Finally, the proposed rule would require that financial institutions include on a prepaid account access device the financial institution's name, the URL of a Web site, and a telephone number. *See* § 1005.18(b)(7).

a. Benefits and Costs to Consumers

The benefits and costs to consumers arising from the proposed disclosure requirements for prepaid accounts are addressed in four parts: (i) A general discussion of the benefits to consumers of information; (ii) a discussion of the anticipated benefits of the proposed disclosure requirements; (iii) a discussion of consumer engagement with disclosure; and (iv) a discussion of potential costs of the proposed disclosure requirements. Finally, this analysis discusses alternatives to the Bureau's proposed disclosure requirements.

i. Information

According to standard social science models, when consumers are faced with a choice among products in a given market, they consider which choices are available to them as well as the information they have about each of those choices. Further, in order for consumers to make the best choices for their situations, their information must be accurate and descriptive of all of their available options.[425] In reality,

[424] *See* Section ''Disclosure Requirements Generally'' for a summary of disclosures § 1005.7(b) currently requires.

[425] Here, ''make the best choice'' is intended to be descriptive of the consumer's process of choice; to consciously optimize over her choice set and through that process, select the best option. This is distinct from the possible interpretation of obtaining the best outcome, which could be

Continued

however, consumers may not be fully informed. As discussed above, among other reasons, this could transpire because firms perceive an advantage to withholding information, or because consumers perceive gathering information as overly burdensome.

Information provision (*e.g.,* mandated disclosure) can therefore facilitate consumer decision-making in at least three ways. First, information provision can inform consumers about the choices that are available to them. This provides a direct benefit of improving the likelihood that consumers find products that fit their needs.[426] In addition, as discussed above, informing consumers about their choices (or facilitating information gathering by consumers) may increase competition in the product market, which in turn could cause firms to offer consumers better terms. Second, information provision can inform consumers about the attributes of the products that are available to them. This provides the direct benefit of enabling consumers to consider the relative merits of each product and to select the best products from among their choices. In addition, revealing or highlighting certain attributes of a product-type could induce firms to compete on those attributes, raising benefits to consumers or lowering costs. Third, information provision can inform consumers about the attributes of the products they have already chosen. This can both increase the benefits a consumer receives from a chosen product and reduce the costs associated with its use.

ii. Benefits

Together, the Bureau believes that the short and long form disclosures provide consumers with the information necessary to make fully informed choices regarding the prepaid account products available to them. The short form disclosure would disclose key fees, conditions, and notices. So that they may be quickly located and compared, the fees that participants in the Bureau's testing identified as being most important to them would be listed at the top of the short form disclosure.[427] Consumers seeking information not found on the short form disclosure could utilize the long form disclosure. The long form disclosure would list all fees for a particular prepaid account product and their qualifying conditions, if any. Accompanying fees with their qualifying conditions would help consumers to become fully informed about the details of each prepaid account product and therefore improve consumer choice among available products. As noted, the long form would be required to be made available to consumers pre-acquisition in all acquisition channels. As a result, interested consumers would always be enabled to make fully-informed acquisition decisions. In addition, proposed § 1005.18(f) would effectively require the long form disclosure to be disclosed whenever a product's terms and conditions are disclosed. The Bureau believes that because these disclosures are what consumers will likely reference throughout their ongoing use of their prepaid accounts, this provision could potentially help inform consumers' use of their prepaid account products after acquisition.

In part, the Bureau designed the short form disclosure to guide consumers to what it believes are important features of most prepaid account products. By limiting displayed information, the disclosure would make the information that is disclosed more salient and easier to locate.[428] As noted above, the fees that participants in the Bureau's testing identified as being most important to them would be listed at the top of the short form disclosure, which the Bureau believes is a likely point for consumers' first engagement.[429] This effect would be reinforced by the display of top-line information, which would be presented in a relatively large, bold font offset by whitespace. Other disclosed fees would be presented in clear, concise language and listed in a table with horizontal lines to direct the eye and padded by whitespace for ease of reading.

One potential outcome of the Bureau's emphasis of a limited number of fees in the short form is that consumers could begin to rely on this information to guide their purchase decisions more heavily than they do currently. If so, then financial institutions may in turn increase their competitive efforts on these dimensions, which could result in a benefit for consumers in the form of a reduction in these particular fees.

Another benefit of the proposed rule would be to standardize prepaid account product disclosures. Currently, there is significant variation in the content and formatting of the disclosures offered in connection with prepaid accounts that are available to consumers prior to acquisition.[430] These disclosures generally convey only certain fees, terms, and conditions, and the items disclosed vary across prepaid account products. In addition, the form of these disclosures varies significantly across products, variously utilizing bulleted lists, tables, plain text, and combinations of these methods. In some cases, fee inclusion, fee descriptions, and fee prominence are seemingly selected to highlight the relative strengths or to diminish the relative weaknesses of the particular product. As described above, the Bureau believes that standardization would reduce the cost to consumers associated with finding and understanding critical information about prepaid accounts and therefore increase consumers' knowledge of their available choices and facilitate comparison shopping among prepaid account products. The short form disclosure would standardize the summary disclosure of key fees, conditions, and notices. Similarly, the long form disclosure would standardize the display of fees and the details of their qualifying conditions. The proposed long form disclosure's categories and its tabular display would organize the complete list of a prepaid account product's fees, making them easier for consumers to locate and compare across products.

If a financial institution principally uses a foreign language on packaging material, by telephone, in person, or on

achieved without optimizing; through random selection among known options, for example.

[426] Increasing knowledge of the consumer's choice set may be particularly beneficial when products within a market are highly differentiated or in which consumers within a market have diverse tastes.

[427] Examining payroll account usage data, Wilshusen el al. find that these fees also constitute a large majority of the fees charged to consumers, both by incidence and total value. *See 2012* FRB Philadelphia Study, at 10.

[428] Reducing the size of the choice set for choices made under time pressure has been shown to increase both the percentage of the remaining items seen as well as the time of fixation on those items. *See* Elena Reutskaja et al., *Search Dynamics in Consumer Choice under Time Pressure: An Eye-Tracking Study,* 101 Am. Econ. Rev. 900 (2011).

[429] Andrew Caplin et al., *Search and Satisficing,* 101 Am. Econ. Rev. 2899 (2011).

[430] This variation is pronounced in both retail stores and non-retail channels. For example, The Pew Charitable Trusts documented wide disparity in disclosures available on prepaid card Web sites. *See* The Pew Charitable Trusts, *Loaded with Uncertainty: Are Prepaid Cards a Smart Alternative to Checking Accounts?* (Sept. 2012), available at *http://www.pewtrusts.org/en/research-and-analysis/reports/2012/09/06/loaded-with-uncertainty*; *see also* The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards* (Feb. 2014), available at *http://.pewtrusts.org/en/research-and-analysis/reports/2014/02/06/consumers-continue-to-load-up-on-prepaid-cards.* Relatedly, CFSI and Pew cited the lack of current standards, among other things, as motivation for developing their own model forms. See CFSI, *Thinking Inside the Box: Improving Consumer Outcomes Through Better Fee Disclosure for Prepaid Cards* (Mar. 2012), available at *http://www.cfsinnovation.com/content/improving-consumer-outcomes-through-prepaid-cards*; *see also The Need for Improved Disclosures for General Purpose Reloadable Prepaid Cards* (Feb. 2014), available at *http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/02/26/the-need-for-improved-disclosures-for-general-purpose-reloadable-prepaid-cards.*

the Web site consumers utilize to acquire a prepaid account, the short form and long form must be provided in that same foreign language. A financial institution must also provide the long form disclosure in English upon a consumer's request and on any part of the Web site where it provides the long form disclosure in a foreign language. The Bureau believes that utilizing a foreign language to acquire a prepaid account could imply that that foreign language is the consumer's language of greatest proficiency, and this proposed requirement therefore ensures that such consumers receive the information they need to make an informed choice. Since this implication does not necessarily follow, the English version of the long form disclosure would also be available to consumers who are more proficient in English or who may seek informed help and advice from family or friends with English proficiency.

The proposal would also require disclosure of the availability of an overdraft service or other credit feature or the lack thereof on the short form disclosure. Because both the existence of, and the absence of, possible credit plans are required to be similarly disclosed, consumers would be able to easily compare prepaid account products along this dimension. The Bureau's consumer testing, in addition to external studies,[431] suggests that many consumers choose prepaid products specifically to avoid overdraft services. Requiring the existence of credit features to be disclosed on the short form disclosure would help those consumers make informed acquisition decisions. Conversely, those consumers who are seeking a prepaid account with the possibility of accessing credit would be able to more easily identify products that offer such a feature.

In addition, if at any point a credit feature may be offered to any holder of a given prepaid account, then the financial institution would be required to include in that prepaid product's long form the disclosures described in Regulation Z, 12 CFR 1026.60(a), (b) and (c). These are the same disclosures that Regulation Z requires financial institutions to provide along with mail or electronic applications for, or solicitations to open, credit card accounts. Because this information would be included in prepaid accounts' long form disclosures, consumers would be made aware of the fees associated with such a plan, were it to be offered. Those consumers who are able to accurately predict their future use of such services could compare the prices of various prepaid account products, taking into account the price of an associated credit feature, in making their initial acquisition decision. The Bureau requests comment and the submission of data that could inform the Bureau's consideration of the effectiveness of the proposed credit-related disclosures on both the short form and long form disclosures, including information about the use of the terms ''credit-related,'' ''credit,'' and ''overdraft.''

Before acquiring a payroll card account or government benefit account, the proposed rule would require financial institutions to include above the top-line on their short form disclosure a statement that the consumer does not have to accept the payroll card account and that other methods are available from which the consumer may choose to receive his wages or salary from the employer instead of receiving them on the payroll card account. This provision would ensure that employees are informed that receiving their wages on a payroll card account is neither a condition of their employment nor their only option. Moreover, it would ensure that recipients of government benefits are informed that they do not have to accept payments in the government benefit account and that they can ask about other ways to get their benefit payments.

Finally, proposed § 1005.18(b)(2)(i)(B)(*10*) would require disclosure of the total number of fees charged by the financial institution other than those disclosed on the short form disclosure. In the Bureau's testing, this number became a focal point for participants. If this number becomes a focal point for consumers generally, then financial institutions may choose to compete on this metric, which could potentially reduce the number of fees imposed in connection with prepaid accounts. As a result, consumers may benefit from fewer hidden fees and simpler products, generally.

iii. Engagement

According to the standard social science models of consumer decision-making presented above, consumers must have relevant and accurate information in order to make good choices. However, recent research in social science, law, and design suggests that even if consumers were provided an unlimited amount of information, many consumers would not comprehend or utilize all that information.[432] This research highlights the importance of an initial step, ''engagement,''[433] and posits that when a consumer encounters any new informational provision, she conducts a split-second analysis, assessing the costs and benefits of continued consumption of that information.[434] This calculation incorporates the consumer's automatic emotional response to the design as well as the consumer's expected reward from engagement. Without an affirmative decision at this first step, neither utilization nor comprehension can occur.[435]

The Bureau designed the model short form disclosure not only to provide relevant information to consumers, but also to increase consumer engagement. To appeal to consumers' automatic emotional response, the Bureau designed the short form disclosure to be visually appealing as well. In addition, to reduce the perceived difficulty of learning about a prepaid product, the short form disclosure assigns terms a clear hierarchy through positioning, font-size, accompanying whitespace, and font-weight; includes concise descriptions of fees and conditions; and uses asterisks and fine-print sparingly. Finally, as the perceived cost of using a disclosure increases with the amount of information provided, the proposed short form disclosure presents consumers with a reduced, manageable set of information about the product.[436]

iv. Costs

The Bureau's effort to simplify pre-acquisition disclosures may also

[431] *See* 2014 Pew Study.

[432] James Lacko & Janis Pappalardo, *The Failure and Promise of Mandated Consumer Mortgage Disclosures: Evidence from Qualitative Interviews and a Controlled Experiment with Mortgage Borrowers,* 100 Am. Econ. Rev. 516 (2010); *see also* Kleimann Commc'n Group, *Know Before You Owe: Evolution of the Integrated TILA RESPA Disclosures* (July 2012); For example, Eric Johnson, et. al. *Can Consumers Make Affordable Care Affordable? The Value of Choice Architecture,* PLOS One, Dec. 2013, at 1, 2.

[433] Throughout, this treatment describes the *first moment* of information consumption as ''engaging'' with the information provision. ''Engaging,'' as it is used here, is therefore distinct from ''reading'' or ''comprehending,'' both of which could imply sustained consumption.

[434] A related decision-making framework is developed with accompanying case studies by Stephen Wendel. *See,* Stephen Wendel, *Designing for Behavior Change: Applying Psychology and Behavioral Economics* (Mary Treseler ed., 2013).

[435] *See, e.g.,* Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law,* 66 Stan. L. Rev. 545 (2014).

[436] The idea that consumers may decrease their engagement with information when more information is provided is somewhat supported by research on ''choice overload.'' This work demonstrates that when choice sets are large, some people opt to make no choice at all. *See, e.g.,* Sheena Iyengar et al., *How Much Choice Is Too Much? Contributions to 401(k) Retirement Plans, in* Pension Design and Structure: New Lessons from Behavioral Finance 83 (Oxford: Oxford University Press 2004).

generate costs for consumers. As discussed above, the Bureau's emphasis of a limited number of fees in the short form could result in a reduction of those particular fees through competitive pressure. However, to the extent they exist, fees that would be relatively *de*-emphasized by the proposed disclosure regime could, as a result, experience an easing of competitive pressure and thereby increases in the amounts charged.

Proposed § 1005.18(b)(2)(i)(C) may also generate costs for consumers. If the amount of the fee that a financial institution imposes for a given fee type can vary, then proposed § 1005.18(b)(2)(i)(C) would require the financial institution to disclose the highest fee associated with that fee type. As discussed above, the Bureau believes that there is a clear benefit to consumers of providing a simple and concise short form disclosure, and the Bureau believes that this is achieved, in part, by limiting footnotes and fine print. However, in acquisition channels in which the short form disclosure is not necessarily accompanied by the long form disclosure, this provision could result in a consumer having less information about a prepaid product than they would have had in the current marketplace. The provision would therefore create a distinct new cost to consumers if it results in them not having all the information they want or need to make their acquisition choice.

Furthermore, proposed § 1005.18(b)(2)(i)(C) may make some fees associated with a fee type less salient to consumers than they are currently. As a result, these fees could increase either because consumers find those fees difficult to monitor or because of a reduction in competitive pressure on those fees.

v. Alternatives

An alternative to the proposed disclosure regime that some nonprofit groups have suggested is full disclosure of all fees regardless of the acquisition channel. These groups argue that, among other things, any disclosure other than a full disclosure of all fees enables financial institutions to hide fees that could be important to consumers. The Bureau believes the potential harm of such actions to be largely mitigated by the existence of the long form disclosure, which discloses all fees, and which consumers would have to receive or have access to prior to account acquisition. The short form disclosure also would contain two additional elements that could mitigate the risk of hidden fees. First, the proposed incidence-based portion of the short form disclosure ensures that consumers are informed of the fees that consumers incur most frequently for a particular product and that are not part of the static portion of the short form disclosure. Second, as noted above, the proposal would require disclosure of the total number of fees charged by the financial institution other than those disclosed on the short form disclosure. The Bureau believes that disclosure of this number, coupled with the incidence-based disclosures, should make conspicuous any attempt to hide charges.

Another alternative suggested by some consumer advocacy groups was to disclose a single number for each product that would indicate the relative costliness of that product. Commenters suggested that this number could be an estimate of monthly costs to consumers for using a prepaid account, the average amount paid by users of a prepaid account program, or the output of an algorithm intended to replicate specific consumers' use-cases of prepaid accounts. The Bureau believes that while such an approach holds promise, it is not well-suited to prepaid products at this time. The Bureau's testing, along with other studies, revealed many typical use cases for prepaid accounts.[437] The diversity of use cases makes it difficult to design disclosures that provide relevant information for consumers with respect to their all-in cost to use a particular product since such costs could vary significantly. For example, the monthly cost for someone who uses a prepaid product primarily for occasional online purchases could be significantly different from the monthly cost for someone who uses a prepaid product as a checking account replacement. Indeed, because of the variety of use-patterns, such overly-simplistic disclosures may be more misleading than helpful.

b. Benefits and Costs to Covered Persons

The benefits and costs to a covered person arising from the proposed disclosure requirements depend on the covered person's current business practices. This treatment therefore considers benefits and costs relative to those borne by financial institutions in the current marketplace. They are addressed in five parts: (i) A discussion of common sources of cost; (ii) a discussion of the costs associated with proposed provisions, including acquisition-channel-specific costs for channels other than the retail channel;[438] (iii) a discussion of the costs specific to the retail acquisition channel; (iv) a discussion of benefits; and (v) a discussion of the costs and benefits to new entrants.

i. Common Sources of Cost

The Bureau recognizes that certain financial benefits to consumers that stem from the proposed disclosures may have an associated financial impact on covered persons. Covered persons generate revenue through consumers' use of their products. Therefore, when a consumer experiences a financial benefit, a financial institution may experience a financial cost of the same magnitude. Such costs could stem from each of the primary consumer benefit channels identified above: Bolstered consumer knowledge of alternative products; improved acquisition-choices from among available products; lower-cost, higher-benefit usage of acquired products; and increased competitive pressures.

A number of the provisions detailed above require financial institutions to provide or make available disclosures orally via a telephone. The Bureau expects that compliance with these proposals may require implementation costs of updating an interactive voice response (IVR) system and/or training live customer service agents. The Bureau believes that both of these costs will be relatively small. To the extent that the proposed provisions increase usage of financial institutions' telephone systems, financial institutions may incur additional ongoing costs of utilizing or operating these systems. According to industry sources, utilizing an IVR system costs up to $0.12 per minute, while live agent customer service costs up to $0.90 per minute. The total burden of these costs for any single financial institution would depend on the financial institution's potential customers' demand for obtaining disclosures orally over the telephone, and may depend on the financial institution's negotiated rates for IVR and/or live agent customer service. Finally, financial institutions would bear small ongoing costs of monitoring and updating to ensure that their telephone systems provide accurate information.

Similarly, a number of the provisions detailed above require financial institutions to provide or make available disclosures electronically, via a Web

[437] See ICF Report at 5; *see also* 2014 Pew Study.

[438] This treatment considers five significant acquisition channels for prepaid accounts: In-person, in a retail store; in-person, in a non-retail environment, such as a bank or place of employment; orally, over the telephone; electronically, via a Web site; and via direct mail.

site. The Bureau believes that all prepaid account providers already offer at least one service electronically, via a Web site, and therefore that implementation costs of complying with these provisions would not include the costs of obtaining and initializing a Web site. To the extent that the proposed provisions increase usage of financial institutions' Web site(s), financial institutions may bear additional ongoing costs of bandwidth usage. In addition, financial institutions would be required to design an electronic version of the relevant disclosure(s), and therefore would bear a one-time web-design cost. The Bureau believes this cost would be relatively small and also mitigated by the Bureau's provision of model forms and sample forms. The total burden of these costs for any single financial institution would depend on the financial institution's customers' demand for obtaining disclosures electronically, via a Web site, and may depend on the financial institution's negotiated web-hosting rates. Finally, financial institutions would bear small ongoing costs of monitoring and updating to ensure that their Web site(s) provides accurate information.

ii. Costs

As noted, Regulation E § 1005.7(b) currently requires financial institutions to provide certain initial disclosures, and this proposal would extend this provision to prepaid accounts. Generally, the Bureau believes that financial institutions already disclose full terms and conditions, which include much of what would be required by § 1005.7(b), before the first electronic fund transfer is made. The disclosure requirements of Regulation E section § 1005.7(b) as they are currently defined (not considering the modifications in proposed § 1005.18(f)) would therefore entail very small cost to covered persons.

Proposed § 1005.18(b)(2) through (4) would set forth the content and form requirements for the short form and long form disclosures. To satisfy these requirements, financial institutions would incur one-time costs of designing compliant disclosures. Based on industry outreach, the Bureau understands that the design process will require as many as 100 labor hours per prepaid product, including time for design work and legal and financial institution review. However, the design costs should be offset somewhat by the Bureau's provision of model forms and sample forms for the required disclosures.

In-person transactions and direct mail transactions would require the short form and long form disclosures to be disclosed on paper. The long form disclosure would be disclosed both pre-acquisition and as part of the terms and conditions document. For each prepaid account sold, this would entail additional costs of materials (*e.g.,* printing, paper), logistics (*e.g.,* shipping costs), and personnel training (*e.g.,* how to disclose the forms in retail settings).

Prepaid account transactions conducted orally over the telephone would necessitate an oral disclosure of the short form disclosure prior to acquisition. Financial institutions would be able to choose between disclosing the long form orally prior to acquisition and communicating prior to acquisition that the long form is available orally over the telephone or electronically, via a Web site. Both the costs of providing disclosures orally over the telephone and the costs of providing disclosures electronically, via a Web site, were considered above. Because the labor and capital necessary to conduct business over the telephone may also be used to disclose fees, the Bureau estimates that the costs of providing disclosures orally over the telephone would be substantially mitigated for financial institutions that already transact over the telephone.

Prepaid account transactions conducted electronically, via a Web site would necessitate electronic disclosure of both the short and long form disclosures prior to account acquisition. The costs of providing disclosures electronically, via a Web site were considered above. The Bureau believes that these costs would be minimal for financial institutions that transact online since they generally already disclose fees and terms and conditions online.

Transactions that do not occur in person, such as those that occur over the telephone, via direct mail, or via a Web site, may necessitate financial institutions to send consumers an account access device via the mail. The Bureau understands that these deliveries typically include the prepaid products' full terms and conditions. Therefore, proposed § 1005.18(f) would require that these deliveries include a long form disclosure. As a result, financial institutions that do not transact with consumers in person may incur small new ongoing costs in the form of increased shipping costs and increased materials costs.

Financial institutions that distribute payroll card accounts or government benefit accounts may incur additional costs in order to provide on the short form the notice described in proposed § 1005.18(b)(2)(i)(A) that consumers are not required to accept a payroll card account, and a similar requirement for government benefit accounts in proposed § 1005.15(c)(2). Additional costs could accrue, for example, if the additional disclosure caused the short form disclosure to exceed the space constraints of payroll card packaging materials. However, the Bureau believes that in the payroll card account context, prepaid accounts are not usually distributed within space-constrained packaging, and that the short form disclosure requirements could be easily met if provided, for example, on an 8½ inch by 11 inch sheet of paper.[439] If it is the case that this disclosure both informs consumers and motivates them to consider other payment options, then the costs to some financial institutions could increase. In particular, a financial institution could experience a cost if consumers decline to acquire its prepaid account product as a result of this notice. Both of these types of costs could be small, depending on current industry practice. In particular, existing regulation already prohibits employers and financial institutions from requiring a consumer to use a payroll card account to receive wages or a government benefit account to receive benefit payments. If covered persons comply with this existing regulation in a manner similar to the proposed requirement, then the additional cost of this proposal would be very small.

If a financial institution principally uses a foreign language on packaging material, by telephone, in person, or on the Web site consumers utilize to acquire a prepaid account, then it would be required to provide the short form and long form disclosures in that same foreign language. In addition, the financial institution would be required to make an English version of the long form disclosure available upon request. If a financial institution does not already maintain the practice of disclosing its fee schedules in both languages, then this requirement may entail a small fixed cost to have its disclosures translated, as well as additional ongoing translation costs whenever the financial institution introduces a new fee or changes the wording of any part of its terms and conditions. Because, in such cases, the long form disclosure would be required

[439] The Bureau's industry outreach revealed that in some cases payroll card accounts and similar products are distributed in unsealed envelopes that also contain fee disclosures, the terms and conditions documents, and marketing materials. The model short form that includes this payroll card account notice easily fits within these constraints. *See* proposed Model Form A–10(a) in Appendix A.

to be provided in two languages, this requirement could also result in additional ongoing material costs and increased shipping costs. The total burden of costs related to this requirement would depend on the amount that these requirements diverge from current practices. Based on industry outreach, the Bureau believes that most financial institutions that transact in foreign languages also provide fee disclosures in those foreign languages, and therefore that this requirement is unlikely to generate significant additional costs.

A financial institution would need to design its short form disclosure to indicate whether it may offer an overdraft service or other credit feature to its prepaid account holders, and its long form disclosure to disclose the fees and costs associated with such a credit feature, when offered. This requirement would generate direct costs for financial institutions that offer such credit features. However, based on its Study of Prepaid Account Agreements of existing prepaid account products, the Bureau believes that very few financial institutions offer such features. Financial institutions that do offer credit features would face ongoing costs of insuring that the disclosed costs of credit in the long form disclosure are accurate.

The ongoing costs of maintaining the short form and long form disclosures would depend on current practices and the acquisition channel. The long form and the non-incidence-based portions of the short form disclosure (the incidence-based portion is discussed below) would require updating at most as often as a prepaid product's terms and conditions are updated. Based on industry outreach, the Bureau believes that financial institutions rarely change the terms and conditions of their prepaid products in a way that would require changes to the disclosures they provide. Moreover, the Bureau believes that pursuant to State law and regardless of this proposal, provided marketing materials, fee disclosures, and terms and conditions documents must always be accurate when provided to consumers. Therefore, the Bureau does not believe that maintaining the accuracy of the long form disclosure and the non-incidence-based portions of the short form disclosure would represent a substantial new ongoing cost to financial institutions.

Financial institutions may incur a number of ongoing costs to comply with the short form disclosure's proposed incidence-based disclosure requirements. The incidence-based portion of the short form disclosure would require disclosure of the three fees incurred most frequently in the prior 12-month period for that particular prepaid product that are also not already disclosed in the static portion of the short form disclosure. These fees could vary over time for a given product due to changes in how consumers use the card or due to changes in the product itself. In either case, financial institutions would be responsible for updating the incidence-based portion of their short form disclosures. If a financial institution changed its product, then it would be required to populate the incidence-based portion with a reasonable estimate of the fees that would match the incidence-based portion's criteria. For each prepaid product, the financial institution would be required to reassess fee incidence ranking used to determine the incidence-based portion of the product's short form disclosure once per year. Financial institutions would be permitted to choose the date of reassessment for each individual product, but for a given product, reassessment would be required to occur at the same time each year. Fee incidence rankings would be required to be assessed using data from the twelve months prior to the reassessment date each year. Financial institutions may incur some fixed costs of implementation if they must update their accounting systems or practices to evaluate fee incidence from all sources on a twelve-month basis. However, the Bureau believes that most financial institutions are already capable of tabulating fees in this manner, and thus it expects this cost to be small. Moreover, since financial institutions would be free to choose reassessment dates, the Bureau believes that ongoing costs associated with this reassessment should be small as well. For example, financial institutions could choose their reassessment date to coincide with its established calendar for evaluating its prior year performance for tax, or other reporting, purposes.

After reassessment, financial institutions would have up to 90 days to update the incidence-based portion on their short form disclosures. In addition, after reassessment, financial institutions would be prohibited from printing new retail stock that includes out-of-date incidence-based fee information. However, financial institutions would be allowed to continue to sell stock printed prior to the reassessment date indefinitely. For a given prepaid product, the full burden of the costs of updating short form disclosures due to changes in the incidence-based portion would depend on the frequency with which the top three fees change for that product and the channel through which that product is distributed. The Bureau believes the costs of updating the incidence-based portion are very small for acquisition channels where disclosures are not printed on packaging material.

iii. Retail Costs

Through industry outreach and analysis, the Bureau understands that the proposed rule could generate many costs unique to the retail acquisition channel. For this reason, the retail acquisition channel is considered separately here. Nonetheless, costs borne by financial institutions transacting in the retail acquisition channel are largely the same as those borne by the financial institutions described above. This treatment therefore takes the above treatment as a starting point and describes costs to covered persons only as they deviate from that treatment.

In a retail store, financial institutions would be required to provide their prepaid account product's short form disclosure before the consumer acquires the prepaid account. Through discussions with industry participants, the Bureau has learned that some financial institutions will not be able to accommodate the short form disclosure on the exterior of their current packaging materials without significant changes, such as redesigning of packages.[440] The one-time costs associated with a package redesign are discussed above and are relatively small. However, some financial institutions currently utilize the exterior of their packaging materials to facilitate retail transactions or to incorporate fraud prevention mechanisms (*i.e.,* by providing bar codes or other information). In these cases, the Bureau has heard from industry participants that complying with the short form disclosure requirement of proposed § 1005.18(b)(1), while maintaining their products' previous levels of functionality and fraud prevention, could as much as double the per unit cost of printing packaging materials.[441]

In a retail store that is not operated by the financial institution or agent of the financial institution, the financial

[440] The Bureau made early versions of its model forms available to the public for comment. *See* Eric Goldberg, *Prepaid cards: Help design a new disclosure,* CFPB Blog Post (Mar. 18, 2014), *http://www.consumerfinance.gov/blog/prepaid-cards-help-design-a-new-disclosure/.*

[441] The Bureau heard from industry participants that the per-package printing cost, including the card access device and the packaging materials, ranges from $0.75 to $2.00.

institution would be able to choose between two methods of providing the long form disclosure. As it would be required to do in other acquisition channels, the financial institution could provide the long form disclosure before a consumer acquires a prepaid account. Alternatively, in a retail store, a financial institution could provide the long form disclosure after the consumer acquires a prepaid account, provided that, among other things, the short form disclosure includes both a telephone number and a URL of a Web site that the consumer could use to access the long form disclosure. The cost of this requirement will therefore vary for financial institutions based on the option they select. Financial institutions that provide the long form disclosure pre-acquisition would bear additional costs of shipping and materials and potentially personnel training in retail settings. Financial institutions that do *not* provide the long form disclosure pre-acquisition would bear the costs of making the long form available electronically, via a Web site and orally over the telephone. These costs were considered in generality above.[442]

Based on industry outreach and analysis, the Bureau believes that in the retail channel a prepaid product's terms and conditions document is included in its packaging materials. In this case, proposed § 1005.18(f) would require that financial institutions also include the long form disclosure inside their retail packaging materials. This requirement could create new ongoing costs for financial institutions through increased material and shipping costs.

Moreover, currently, if a prepaid product's terms and conditions document is included in its packaging materials, then any change in a prepaid account product that would trigger a need to update the prepaid account product's disclosures would also trigger a need to update the prepaid account product's terms and conditions document. Therefore, the Bureau believes that in the retail acquisition channel, monitoring the long form and the non-incidence-based portions of short form disclosure for accuracy, and updating these disclosures to reflect changes in the prepaid product, would not represent significant new costs relative to the costs currently borne by financial institutions.

In addition, the Bureau believes that in the retail channel the cost of monitoring and updating the incidence-based portion of the short form would be almost fully mitigated by two factors: first, because financial institutions would be able to sell their out-of-date retail packaging indefinitely there would be no costs of product destruction or resetting; second, because financial institutions could choose their reassessment dates to coincide with their natural product refresh cycle, there would be few additional costs to printing or shipping new prepaid cards.

The proposed two-tiered effective date of this proposed rule would require that newly printed retail materials are accurate within nine months of the date of publication of a final rule in the **Federal Register**, but would allow out-of-date stock to be sold for up to twelve months thereafter. Because this extended implementation period would allow financial institutions time to sell their old stock, it would also reduce, relative to a shorter period, financial institutions' total costs of shipping and destroying old stock. Moreover, the extended implementation period would allow financial institutions' printing and shipping of updated stock to coincide with financial institutions' natural yearly product refresh cycle. Nonetheless, through discussion with industry participants, the Bureau understands that even after an extended implementation period, out-of-date stock may remain in retail locations, financial institutions may be uncertain as to whether or not out-of-date stock remains at a given retail location, and as a result, certain costs, such as the labor cost for merchandisers, may not be greatly reduced by the extended implementation period.

If a financial institution has not sold all of its out of date stock by the second effective date, then the proposed rule may result in financial institutions destroying and replacing out-of-date stock.[443] The Bureau estimates the one-time cost of destruction and replacement of retail stock due to implementation of the proposed rule to be $0.68 per prepaid card in distribution.[444] This cost is comprised of the costs of creating new stock; removing and destroying old stock; confirming that no old stock remains in retailers' possession and/or is offered for sale; and replenishing retail inventory. Based on industry outreach, the Bureau estimates that after twelve months 40 percent of total prepaid account stock will remain in distribution. It estimates that destroying remaining stock would cost approximately $0.05 per card for the destruction service itself, approximately $20 per retail location in resetting costs,[445] and $28 per retail location for secure shipping to a destruction facility. Further, it estimates that the cost of printing new cards and packaging materials would be between $0.75 and $2.00 per newly printed card, depending on the volume of the order and the type of packaging materials.[446]

iv. Benefits

Finally, the Bureau recognizes that when a consumer chooses one prepaid product over another, one covered person incurs a cost but another receives a benefit. Because consumers use prepaid products in a variety of ways, it is currently unclear if the proposed rule would yield more such benefits for some financial institutions than for others. However, in line with the discussion of benefit to consumers, the Bureau believes that the proposed rule may most benefit financial institutions that offer products with low fees, generally; low top-line fees (and other fees in the static portion of the short form), specifically; and fewer fees, overall.

v. New Entrants

The Bureau expects that costs and benefits to new entrants would be similar as those experienced by financial institutions that currently provide prepaid account products. Therefore, except where noted in this

[442] These costs would also apply to provision of the English version of the long form as would be required upon a consumer's request by proposed § 1005.18(b)(6).

[443] The figures presented in this treatment are estimates derived from discussions with a limited number of industry participants. In some cases, the Bureau arrived at its estimates by combining estimates from various sources or by interpolating from industry estimates to estimate costs over new timeframes. Moreover, the Bureau recognizes that these figures vary as a function of myriad factors, including the size of the financial institution's business, its business practices, and its relationships with other participants in the value chain. The Bureau requests comment on these preliminary figures as well as the submission of data that could inform the Bureau's consideration of the costs of pre-acquisition disclosures to providers of retail prepaid accounts.

[444] ''Card'' is used here to refer to the access device for a single physical prepaid account sold in a retail store. ''Cards in distribution'' is defined to be the number of cards in retail distribution channels on the date of publication of the Bureau's final rule in the **Federal Register**.

[445] This estimate is based on discussions with industry participants, and is comprised of an estimate of $20 per hour to pay a professional stocker, or ''merchandiser,'' and an estimate that the resetting process takes approximately one hour complete.

[446] The cost of printing a single new card could be more than the per-card cost of implementation because not every card in distribution would need to be reprinted as a result of this proposed rule. As stated, the Bureau believes that approximately 40 percent of cards will remain after the second effective date and this is therefore also the Bureau's estimate of the percentage of cards that would need to be re-printed as a result of this proposed rule.

part, the above discussions apply to new entrants as well.

The proposed rule would imply fewer fixed costs of implementation for new entrants. Because producing disclosures, marketing materials, and packaging materials is a natural part of the process of creating a new prepaid account product, the proposed rule would not impose new costs of changing these things for new entrants. Moreover, because new entrants do not currently have stock in retail channels, the proposed rule would not generate the implementation costs of destroying and replacing out-of-date stock in the retail channel for new entrants.

The Bureau believes that new entrants' costs, as they relate to the incidence-based portion, would be similar to other covered persons'. Although financial institutions do not have actual fee data for new prepaid account products, the Bureau believes that they nonetheless should have a reasonable expectation as to which fees would be incurred most frequently. Thus, proposed § 1005.18(b)(2)(i)(B)(*8*)(II) would require institutions, for those prepaid account products without prior fee data, to estimate in advance the fees that should be disclosed in the incidence-based portion of the short form disclosure. The Bureau expects that this effort would be no more costly than the effort of producing an incidence-based portion based on actual fee data (as would be required of financial institutions that possess such data). Like other covered persons, new entrants would be required to update the incidence-based portions of their disclosures to reflect the previous year's data every twelve months.

2. Applying Regulation E's Periodic Statement Requirement With Slight Modification and Providing an Alternative Means of Compliance With the Requirement

While expressly defining prepaid accounts as accounts subject to Regulation E, the Bureau's proposal also would extend the alternative means of compliance with Regulation E's periodic statement requirement, currently offered to payroll card account providers, to prepaid accounts with certain modifications. *See* proposed § 1005.18(c)(1). In addition, the proposed rule would modify the alternative means of compliance with Regulation E's periodic statement requirement for government benefit accounts so that it is consistent with the alternative means of compliance for prepaid accounts. *See* proposed § 1005.15(d).

Regulation E currently states in § 1005.18(b) that financial institutions offering payroll card accounts need not furnish periodic statements if the financial institution makes available to the consumer his or her account balance through a readily available telephone line, an electronic history of the consumer's account transactions that covers at least 60 days preceding the date that the consumer electronically accesses the account, and, upon oral or written request, a written transaction history that covers at least 60 days. Similarly, government agencies offering government benefit accounts need not comply with the periodic statement requirement if they make available to the consumer the account balance, through a readily available telephone line and at a terminal, and promptly provide at least 60 days of written history of the consumer's account transactions in response to an oral or written request. *See* existing § 1005.15(c).

The proposed rule would require that covered financial institutions wishing to avail themselves of this alternative means of complying with the Regulation E periodic statement requirement make available to the consumer at no charge his or her account balance through a readily available telephone line, provide the consumer with access to at least 18 months of transaction history online and, if requested by the consumer, provide at least 18 months of transaction history in writing. *See* proposed § 1005.18(c)(1). For those payroll card account providers and providers of prepaid accounts that receive Federal payments that are presently required to comply with the Regulation E periodic statement requirement and are meeting their compliance obligations by relying on the alternative means of compliance, this proposed provision would extend the present requirement that 60 days of transaction history be provided to 18 months. For government agencies that are currently required to comply with the Regulation E periodic statement requirement, this proposed provision would additionally require electronic access to government benefit account history information under the alternative means of compliance, which Regulation E does not presently require.

Regardless of how a financial institution chooses to comply with the proposal, the proposed rule also would require that the financial institution disclose to the consumer a summary total of the amount of all fees assessed against the consumer's prepaid account, the total amount of deposits to the prepaid account, and the total amount of all debits from the prepaid account for both the prior calendar month as well as the calendar year to date. This information would be required to be disclosed on any periodic statement and any electronic or written history of account transactions provided. Finally, for financial institutions following the alternative means of complying with the periodic statement requirement, the proposed rule would extend to prepaid accounts modified requirements for initial disclosures regarding access to account information and error resolution, as well as annual error resolution notices.[447]

a. Benefits and Costs to Consumers

Extending Regulation E's periodic statement requirement to all prepaid accounts would help to ensure that consumers receive the benefits associated with increased information regarding their prepaid accounts. These benefits include having the ability to monitor account balances for both budgeting and the identification of errors.

The Bureau's proposal would require that financial institutions disclose to the consumer a summary total of the amount of all fees assessed against the consumer's prepaid account, along with the total amount of deposits to and the total amount of debits from the prepaid account for the prior calendar month and the calendar year to date, on any periodic statement, any written history of account transactions, and any electronic history of account transactions (*see* proposed § 1005.18(c)(4)[448]). This disclosure would make the cumulative costs associated with the use of the prepaid account accessible and transparent to consumers and, given that some consumers use their prepaid account as their primary transaction account or as a budgeting mechanism for a particular category of expenditures, would also provide these consumers with a means of tracking budgeting goals. The inclusion of these summary measures may also make tracking spending and load patterns less burdensome for consumers and may aid consumers in identifying atypical account activity or spending trends. For those consumers who use their prepaid accounts infrequently and may not track balance information on a regular basis, this

[447] *See* existing § 1005.18(c)(1) and (2) for payroll card accounts, revised as proposed § 1005.18(d) for prepaid accounts, and existing § 1005.15(d)(1) and (2) for government benefit accounts, revised as proposed § 1005.15(d)(1) and (2).

[448] With respect to government benefit accounts, proposed § 1005.15(d)(2) would refer to § 1005.18(c)(2), (3), and (4).

disclosure would provide another means to become familiar with the costs associated with using the prepaid account, including any inactivity fees that may be incurred.

In extending the Regulation E periodic statement requirement to all prepaid accounts, the Bureau would also require that those financial institutions relying on the alternative means of complying with the periodic statement requirement make accessible 18 months of transaction history electronically and, if requested, in writing. Consumers, especially those who rely on a prepaid account as their primary transaction account, may need to consult more extensive account history in connection with, for example, rental and employment applications or tax filings; in these situations, they would benefit from having 18 months of account history available. Additionally, transaction histories may help consumers to discover unauthorized transfers or other errors. For instance, in certain circumstances, consumers have up to 120 days from the date of the unauthorized transfer to assert an error and thus in order to fully exercise these protections, consumers must be able to access at least 120 days of transaction history. The proposed rule additionally requires that account histories provided as part of the alternative means of compliance with the periodic statement requirement be provided electronically. Though government benefit accounts are not presently required by Regulation E to provide such access, and prepaid accounts generally are not subject to this requirement at present, the Bureau's understanding is that most financial institutions offer electronic access.

The Bureau considered alternatives, such as expanding the Regulation E periodic statement requirement without an alternative for prepaid accounts, requiring electronic periodic statements (as opposed to transaction histories), requiring that account histories be made available for various lengths of time, and not expanding the periodic statement requirement to prepaid accounts in any form. In focus group research, the Bureau generally found that consumers were satisfied with the amount of information they receive regarding their transaction history presently (either online, through text message, or over the telephone), and they generally did not express a desire to receive a paper statement.[449] Several industry participants the Bureau spoke with during its outreach, as well as several participants in the Bureau's consumer testing, noted that the time lag between receipt of a paper statement and the transactions covered by the statement decreased its utility for tracking account balance information relative to other means, such as real-time text message alerts, which provide consumers with more timely access. According to one program manager, when it provided electronic periodic statements to all of its customers, its customers only infrequently accessed those statements.[450]

Many consumers participating in the Bureau's focus groups also stated that they monitor their account balance using the internet and mobile devices.[451] This is consistent with the findings of various industry surveys, which suggest that many consumers currently have multiple methods through which they can access information regarding their prepaid account. According to one survey of 66 GPR card programs, almost three-quarters offer text alerts, and more than half offer email alerts regarding account balances and transactions.[452] Another organization reviewed the terms and conditions associated with 18 GPR card programs that they estimated collectively represented 90 percent of the total GPR card marketplace (based on number of active cards in circulation). It found that all of the reviewed cards allowed cardholders to check balances online, via text message, by calling customer service, or on a mobile app or a mobile-enabled Web site.[453]

Although consumers generally have access to transaction history information in some form at present, the proposed rule's requirement that 18 months of written transaction history, 18 months of electronic transaction history, and telephone access to balance information must generally be provided for free would lower the cost of accessing this information for some consumers. Of the 66 GPR card programs reviewed by one organization, 68 percent disclosed a paper statement fee ranging from 99 cents to $10 (median $2.95).[454] As discussed below, the Bureau's discussions with industry participants suggest that few consumers presently request paper statements. It is worth noting, however, that if financial institutions were unwilling to provide such statements to consumers for free, they may decide to require all consumers to provide E-Sign consent in order to have access to the product so that they could provide statements electronically. This could result in decreased access to account information for those consumers who cannot or choose not to provide E-Sign consent.

b. Benefits and Costs to Covered Persons

The benefits and costs to covered persons arising from the application of Regulation E's periodic statement requirement to all prepaid accounts would depend on the financial institution's current business practices and whether the financial institution would choose to avail itself of the alternative means of complying with the periodic statement requirement. Specifically, financial institutions may comply with the proposed requirement by providing periodic statements, either in paper form or in electronic form having obtained E-Sign consent from the consumer, or they may choose to implement the alternative means of complying with the periodic statement requirement.

As discussed above, financial institutions are already required to comply with the Regulation E periodic statement requirement, or the specified alternative, for payroll card accounts and for accounts that receive Federal

[449] *See* ICF Report, at 10.

[450] The program manager reported that consumers viewed the statements for just over one percent of active accounts, and consumers downloaded the statements for slightly less than one percent of active accounts.

[451] According to a survey conducted by the Board, roughly 87 percent of respondents owned or had regular access to a mobile phone, and roughly 61 percent of those with a mobile phone had a smartphone as of December 2013. Additionally, over 89 percent had regular access to the internet, either at home or outside of the home (but excluding internet access through a cellular phone). *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2014,* at 49 tbl.C16, C.18 & C.19 (Mar. 2014), *available at http://www.federalreserve.gov/econresdata/mobile-devices/files/consumers-and-mobile-financial-services-report-201403.pdf.* A survey of prepaid card users found that 88 percent use the internet. *See* 2014 Pew Survey, at 5 ex.2.

[452] *See* The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards: Changes in General Purpose Reloadable Prepaid Cards Make Them More Like Checking Accounts but Without Important Protections,* at 17 (Feb. 2014), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsStillLoadedReportpdf.pdf.*

[453] Additionally, they found that all of the cards reviewed provided consumers with accessible customer service assistance and IVR systems. *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 12 (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.*

[454] Of the GPR card programs reviewed by that organization, 21 percent of programs did not disclose a paper statement fee, and 11 percent disclosed that paper statements are free. *See* The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards: Changes in General Purpose Reloadable Prepaid Cards Make Them More Like Checking Accounts but Without Important Protections,* at 19 (Feb. 2014), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsStillLoadedReportpdf.pdf.*

payments (pursuant to the FMS Rule). Government agencies that offer government benefit accounts are similarly required to comply with this requirement (without the requirement to provide electronic access to account history under the periodic statement alternative). Based on outreach to industry participants, the Study of Prepaid Account Agreements, and review of various industry studies, the Bureau understands that financial institutions generally provide consumers with electronic access to transaction histories or electronic periodic statements and generally provide telephone access to account information similar to what the Bureau is proposing to require.[455] In many instances, electronic transaction histories currently provided extend well beyond the 60 days currently required for certain prepaid accounts.[456] The Bureau's understanding based on outreach to industry is that few, if any, financial institutions provide paper periodic statements or paper transaction histories to consumers with prepaid accounts on a non-ad hoc basis.

If the proposed rule were adopted, the Bureau predicts that most financial institutions would continue to offer account history information to consumers electronically (except for those cases where a written transaction history is required in response to an ad hoc consumer request) and would continue to use an automated telephone line to provide 24 hour access to account balance information. Therefore, the Bureau believes that the majority of costs to covered persons would arise from two sources.

First, periodic statements or transaction histories would be required to display a summary total of the amount of all fees assessed against the consumer's prepaid account, along with the total amount of deposits and the total amount of all debits made to the prepaid account for the prior calendar month and for the calendar year to date. Covered financial institutions would need to modify existing statements or electronic transaction histories to include these totals if such totals are not already included. Second, those covered financial institutions that do not presently make 18 months of transaction history available to consumers would potentially incur additional data storage costs and may need to implement system changes if they choose to avail themselves of the proposed alternative means of complying with Regulation E's periodic statement requirement.[457]

The structure of the costs associated with these changes would depend on whether the financial institution relies on vendors to format or host online periodic statements or transaction histories or whether it performs these functions in-house. In either case, the Bureau anticipates the cost associated with these changes to be minimal. Those financial institutions that format their own periodic statements or transaction histories and do not currently display the required totals on their periodic statements or transaction histories would incur a one-time implementation cost to modify these disclosures.[458] Those providers that currently do not make available 18 months of account history would incur costs associated with obtaining additional electronic storage media to expand existing capacity. According to discussions with industry participants, the costs associated with such an expansion should be minimal.

Many providers of prepaid accounts rely on processors to provide online portals that give consumers access to account history information. Based on discussions with industry participants, the Bureau understands that program managers typically pay processors a flat fee per account that may be a function of both the extent of the account history provided and the number of accounts that are being serviced.[459] These entities would generally rely on their processor to modify periodic statements or electronic transaction histories to display the required summary totals. However, one program manager predicted that if such a fee disclosure were a regulatory requirement, the processor would offer it as part of a standard package of services at no additional cost.[460] However, the Bureau requests additional comment regarding the costs associated with the impact of these proposed provisions.

In formulating its proposal, the Bureau conducted outreach to prepaid card issuers and program managers regarding the utilization of paper account statements by consumers and the cost to financial institutions of providing such statements. Based on these discussions, the Bureau's understanding is that consumer requests for written account histories for GPR cards are infrequent, generally well under one percent of active cardholder-months, regardless of whether the consumer is charged a fee for the statement.[461] The Bureau notes that some providers currently charge consumers fees if they wish to receive paper statements or transaction histories, and in some cases, providers may charge consumers fees that exceed the cost to provide these statements.[462]

[455] One review of 66 GPR card programs found that almost every card provided free online access to account information. It also found that most card programs offered email and text alerts free of charge and that most programs provided the customer with at least a limited number of free interactive voice-recognition customer service calls through which consumers could access account information. *See* The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards: Changes in General Purpose Reloadable Prepaid Cards Make Them More Like Checking Accounts but Without Important Protections,* at 36 (Feb. 2014), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsStillLoadedReportpdf.pdf.* Another review of 18 GPR card programs, comprising an estimated 90 percent of active GPR cards in circulation, found that all of the cards reviewed allowed cardholders ''to check their balance online, via text message, by calling customer service, or on a mobile app or a mobile-enabled Web site.'' *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 12 (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.*

[456] *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 12 (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.* ''Eleven of the fifteen cards for which information is available . . . allow cardholders to access at least two years of transactional data online, which can be important for tax-filing and budgeting purposes. Three of the four cards that offer less than two years of transactional data provide one year of data, while one card offers six months of data.''

[457] As a result of the proposed rule, financial institutions that do not provide consumers with 18 months of transaction history may incur additional costs in the future when migrating information across information technology platforms since additional data must be retained.

[458] One program manager estimated that modifying its Web site to provide such functionality would cost approximately $15,000.

[459] One program manager that relies on a processor for this function told the Bureau that fees for data storage are charged on a per account basis one time at activation. The program manager did not have an estimate of the cost associated with 18 months of history, but costs were generally increasing from $0.08 per account for three months of transaction history to $0.19 per account for one year of transaction history. This program manager also suggested that processor prices decrease with scale and that they were operating at low scale and were consequently paying among the highest prices.

[460] One program manager stated that its processor quoted a one-time cost of $65,000 for providing this functionality on its processor-hosted Web site (in response to an ad-hoc request). This potentially represents an upper bound for the true development cost since this number likely includes a mark-up over the true cost of providing the service. Actual development costs would be borne jointly by the processor and the prepaid account providers relying on the processor for hosting services.

[461] One program manager reported that when it eliminated a $2.50 fee for receiving a paper statement, there was no change in the frequency with which statements were requested.

[462] Estimates quoted to the Bureau by providers varied somewhat but generally were approximately $1 per statement to respond to ad hoc requests once the costs associated with fielding the incoming call, postage, and producing the statement were considered. Providers generally noted that postage is a large driver of this cost. One provider noted

However, given the infrequent nature of such requests (regardless of whether a fee is charged for the statement), the Bureau believes that the revenue impact is likely de minimis. Since a covered financial institution may require that consumers provide E-Sign consent in order to receive a prepaid account, and thus would provide traditional periodic statements electronically instead of following the proposed periodic statement alternative, any revenue impact could be further mitigated.

If the proposed provisions expanded consumer access to account information, financial institutions could benefit from receiving more timely notice of unauthorized transfers by consumers and potentially fewer inquiries by telephone or email. For example, in the event that a consumer identifies an unauthorized transfer, the financial institution may be able to place the appropriate holds on the account to prevent further unauthorized use. Timely notification could also decrease the costs associated with investigations of alleged errors. In addition, if timely notification by some consumers were to provide an early warning of a widespread or systemic set of unauthorized transfer attempts, the financial institution could benefit from cutting off the avenue for the unauthorized transfers before the issue becomes more widespread. However, to the extent that consumers are able to identify unauthorized transfers and other errors that they would not have identified in the absence of these disclosures, financial institutions may incur additional costs.

3. Applying Regulation E's Limited Liability and Error Resolution Regime

The Bureau is also proposing to extend Regulation E's limited liability and error resolution regime, including provisional credit requirements, to all prepaid accounts that have been through the customer identification and verification processes.[463] Regulation E provides that a consumer may be held liable for an unauthorized electronic fund transfer resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met. *See* § 1005.6(a). In addition to describing conditions under which a consumer may be held liable for an unauthorized electronic fund transfer, Regulation E provides limitations on the amount of liability a consumer may assume. *See* § 1005.6(b).

For accounts subject to the Regulation E error resolution provisions, EFTA places the burden of proof on the financial institution to show that an alleged unauthorized transfer was, in fact, authorized. *See* EFTA section 909(b). More specifically, after receiving notice that a consumer believes that an electronic fund transfer was unauthorized, the financial institution must promptly perform an investigation to determine whether an error occurred. Although the investigation must generally be completed within 10 business days (20 business days if the EFT occurred within 30 days of the first deposit to the account), the financial institution may take up to 45 days to complete the investigation if it provisionally credits the consumer's account for the amount of the alleged error within 10 business days of receiving the error notice.[464] *See* § 1005.11(c)(2). Upon completion of the investigation, the financial institution must report the investigation's results to the consumer within three business days and correct an error within one business day after determining that an error occurred. *See* § 1005.11(c)(1). In cases where the financial institution ultimately can establish that no error (or a different error) occurred, the financial institution may reverse the provisional credit. *See* § 1005.11(d)(2). If the financial institution cannot establish that the transfer in question was authorized, the financial institution must credit the consumer's account (or not reverse the provisional credit).

Prepaid accounts that are payroll card accounts, government benefit accounts, and those that receive Federal payments are presently required to provide Regulation E's limited liability and error resolution protections. Other types of prepaid accounts, such as GPR cards that do not receive Federal payments, currently are not required to provide these protections. One study reviewed 18 GPR card programs, estimated to represent 90 percent of the number of active GPR cards in circulation, and found that all of the programs reviewed had adopted the consumer liability protections outlined by Regulation E as it applies to payroll cards.[465] The Bureau's Study of Prepaid Account Agreements found that roughly 89 percent of all programs, and all of the largest GPR card programs, offer liability protections to consumers. The Bureau's Study of Prepaid Account Agreements also found that over two-thirds of prepaid programs (excluding government benefit accounts and payroll card accounts) appear to follow Regulation E's error resolution regime, including provisional credit requirements, with roughly 80 percent of the largest GPR card programs offering such protections.

To the extent that providers already follow policies consistent with Regulation E's limited liability and error resolution regime, the potential impacts on most consumers and covered persons arising from these proposed provisions are limited. Additionally, prepaid accounts are typically subject to payment card association network rules that provide zero-liability protection and chargeback rights in some circumstances that, unless changed by the networks, would apply regardless of what Regulation E requires.[466] In certain cases, business practices may differ from those guaranteed by the terms and conditions associated with the prepaid account, and consumers may, in practice, have additional protections beyond those articulated in the account agreement.

that, given the sensitivity associated with the information, such statements need to be sent via first class mail. Another provider that relied on its processor to provide ad hoc paper statements to consumers pays its processor $2 for each paper statement delivered.

[463] Payroll card accounts and government benefit accounts are required to follow Regulation E's limited liability and error resolution regime regardless of whether the account had been through the customer identification and verification processes. As described above, the FMS Rule requires that a prepaid card that receives a Federal payment comply with these provisions.

[464] The financial institution has 90 days (instead of 45) if the claimed unauthorized EFT was not initiated in a state, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made. *See* § 1005.11(c)(3). Provisional credit is not required if the financial institution requires, but does not receive, written confirmation within 10 business days of an oral notice by the consumer. *See* § 1005.11(c)(2)(i)(A).

[465] *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 12 (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.* Another study asserts that only two-fifths of 66 GPR card programs reviewed included all of the protections, but most of this appears to be the lack of disclosure of mandatory extensions of time frames to submit claims for good cause. Regulation E, as applied to payroll card programs, does not require the disclosure of this information, so it is unclear whether it can be inferred that lack of disclosure of this information in the terms and conditions implies lack of protection for consumers *See* The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards: Changes in General Purpose Reloadable Prepaid Cards Make Them More Like Checking Accounts but Without Important Protections,* at 20 (Feb. 2014), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsStillLoadedReportpdf.pdf.*

[466] *See, e.g.,* Network Branded Prepaid Card Association, *Cardholder Protections—NBPCA Position, available at http://www.nbpca.org/en/Government-Affairs/Policy-Positions/Cardholder-Protections.aspx* (last accessed Nov. 4, 2014).

a. Benefits and Costs to Consumers

In general, the potential benefits to consumers arising from the proposed requirements include reduced risk (relative to a baseline where some programs do not offer the proposed protections) and reduced uncertainty regarding responsibilities and liabilities among market participants. With respect to consumer uncertainty, the Bureau does not have information that would permit it to quantify the extent to which some consumers may overestimate the risks associated with using prepaid accounts (and so may underutilize them) or the extent to which other consumers may underestimate the risks (and therefore may fail to take certain precautions if they utilize them). Both groups would benefit from the reduced uncertainty regarding limited liability and error resolution protections that would result from the proposed rule.

Consumers using prepaid accounts would further benefit from any reduction in expected financial losses incurred due to unauthorized electronic fund transfers or other errors that would result from the adoption of the proposed rule. Although providers typically offer limited liability and error resolution protections in connection with prepaid accounts, the proposed rule would largely eliminate any remaining losses as well as ensure that errors are investigated expeditiously and that consumers regain access to funds more quickly. Thus, this potential benefit to consumers would depend on the following: (a) The number of consumers with prepaid accounts that do not follow the limited liability and error resolution regime, including access to provisional credit, that is described in the proposed rule; (b) the average magnitude of the financial losses consumers would experience from unauthorized transfers or other errors absent the proposed rule; and (c) the probability that these unauthorized transfers or other errors would occur absent the proposed rule. The Bureau notes that these benefits could be concentrated among certain segments of the population were the proposed rule adopted.[467]

In order to quantify the potential benefits to consumers from the proposed requirements, the Bureau would need the quantities in (a), (b), and (c) or a database of representative market information from which to construct these quantities. To the Bureau's knowledge, neither these quantities nor the required database currently exists. However, industry studies provide some insight into the magnitude and distribution of these determinants of the potential benefits from these provisions.

The Bureau first considers the number of consumers with prepaid accounts that currently do not offer the limited liability and error resolution protections, including access to provisional credit, which the proposed rule would require for registered prepaid accounts (and would continue to require for all payroll card accounts and government benefit accounts). As described above, surveys suggest that between eight and 16 percent of consumers have used a general purpose prepaid card in the past 12 months.[468] Providers of these products are probably not required, at present, to offer any of the limited liability and error resolution protections required by the proposed rule to consumers, except for those consumers with prepaid accounts that receive Federal payments (and therefore are covered by the FMS Rule).

However, financial institutions offering prepaid accounts may (and often do) voluntarily offer these protections. As discussed above, the Bureau's Study of Prepaid Account Agreements found that the vast majority of programs reviewed follow Regulation E's limited liability protections. In addition, most prepaid programs appear to follow Regulation E's error resolution regime, including provisional credit requirements. Excluding payroll card account programs and government benefit account programs (which are currently required to comply), over two-thirds of included programs provide error resolution protections, with provisional credit, consistently with Regulation E. The majority of the remainder offered some form of error resolution, albeit with limitations on the conditions under which provisional credit is offered. Among the programs reviewed that were offered by the largest GPR providers, the Study of Prepaid Account Agreements found that roughly 80 percent currently offer error resolution with provisional credit and all offer limited liability protections. Most remaining programs offer full error resolution with provisional credit in limited circumstances.

For the foregoing reasons, the Bureau believes that the number of consumers with prepaid accounts that do not currently offer the limited liability and error resolution (including provisional credit) protections that would be required by the proposed rule is small.[469] However, the proposed rule would provide consumers who lack these protections with important benefits. Further, since financial institutions that voluntarily offer these protections could change their terms and conditions at any time, the proposed rule would remove the risk to consumers that these protections would be discontinued.

The Bureau believes that data describing the average size of the financial losses consumers currently experience from unauthorized transfers or other errors that would be covered by the proposed rule or the frequency with which these events occur are not available. However, these quantities may be associated with certain

[467] The proposed rule may also provide additional benefits to consumers. First, the proposed requirements may reduce the frequency with which unauthorized transfers or other errors occur by creating an additional incentive for financial institutions to prevent these adverse events in the first place. This change could benefit consumers in non-monetary ways if adverse events nevertheless impose meaningful costs (including inconvenience). Second, even if no unauthorized transfer or other error has occurred, the requirement to offer provisional credit provides consumers with a zero-interest loan and a timely investigation. Third, as discussed further below, consumers with prepaid accounts from providers that currently voluntarily offer the proposed protections receive some benefit from the proposed requirements since providers currently offering these protections could change their terms and conditions and stop providing these protections in the future, absent the proposed rule.

[468] *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2014,* at 48 Tbl.C.8a (Mar. 2014), *available at http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201403.pdf. See also* 2014 Pew Survey, at 1. For the purpose of this survey, respondents were explicitly told not to include gift cards, rebate cards, credit cards, or phone cards. Five percent of adults reported using a prepaid card at least once a month. *See also* Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households,* at 29–30 (Oct. 2014), *available at https://fdic.gov/householdsurvey/2013report.pdf* (which reports that 12 percent of households surveyed had ever used prepaid cards, 7.9 percent have used a prepaid card in the last 12 months, and 3.9 percent have used a prepaid card in the last 30 days). *See also* Mercator Advisory Grp., *Prepaid 2013: U.S. Consumers Buying More Cards For Own Use,* at 9 (Oct. 2013) (which reports that seven percent of households surveyed in 2013 currently use a GPR card). *See also id.* at 11 (which reports that 14 percent of households surveyed in 2013 purchased a GPR card in the last year). *See also* GFK, *GfK Prepaid Omnibus Research Findings,* at 6 (2014), *available at http://www.nbpca.org/~/media/2519B8BADB1B4388BA5F11C511B3ACAE.ashx.* The definition of prepaid card in this survey appears to have included some products that would not be covered by the proposed definition of prepaid account. This survey found that 16 percent of respondents had used a ''prepaid card'' that was not a gift card in the last 12 months.

[469] One study which asserts that it covers programs accounting for 90 percent of active GPR cards in circulation found that all providers offered liability and error resolution provisions consistent with those in Regulation E. *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 12 (Mar. 2014), *available at http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.*

observable factors. The average size of a transaction is likely correlated with the loss to the consumer if the consumer is fully liable for the loss. For example, if a consumer were charged for a given purchase twice instead of once or were charged for a transaction that should have been cancelled, the loss would be correlated with the typical size of those transactions.[470] Similarly, the balance typically held in a prepaid account should be correlated with the loss to the consumer if account access is compromised and the consumer is fully liable. Finally, the frequency of transactions is likely correlated with the probability of a loss since transacting with a prepaid account creates exposure to transaction-related errors.

Although data that would permit the Bureau to quantify the potential benefits to consumers from the proposed requirements is limited, recent research can provide some information. One study analyzed prepaid accounts from one large program manager's GPR card program and reports whether the prepaid accounts receive periodic government direct deposits (and therefore are subject to the FMS Rule if it is a Federal payment), periodic non-government direct deposits, periodic self-funded loads, occasional reloads, or are never reloaded.[471] It found that 46 percent of GPR cards analyzed have periodic self-funded reloads and cumulative monthly purchases of $266.[472] The average lifespan of the cards that have periodic self-funded reloads was 256 days; the median, however, was only 60 days.[473] An additional 13 percent of GPR cards analyzed had occasional reloads, cumulative monthly purchases of $94, an average life of 489 days, and a median life of 330 days; and 18 percent of GPR cards analyzed have periodic non-government direct deposit, cumulative monthly purchases of $660, an average life of 925 days, and a median life of 570 days. To the extent that these figures are representative of other prepaid programs, they suggest that approximately three-quarters of GPR cards may be used for significant purchases and are likely not within the current scope of Regulation E (or the FMS Rule). Other researchers have also identified programs that offer prepaid cards that consumers regularly load with funds, but are not payroll cards, are active for at least a year and are used for many thousands of dollars in purchases, loads, and cash withdrawals.[474]

Only limited data describing the frequency of transactions is available, and while these frequencies should correlate with the probability of a loss, the Bureau would require additional information to convert these frequencies into probabilities.[475] There is, however, some suggestive information about the risk of loss in data describing the incidence of fraud with GPR cards offered by one large program manager. According to one study using this data, approximately six out of every 10,000 transactions with GPR cards involve fraud, with a loss of $9.60 for every $10,000 transacted.[476] To the extent consumers are the victims of these frauds, and to the extent these average figures are similar for all types of prepaid accounts, these numbers provide some information about one particular risk that consumers encounter in using prepaid cards and one benefit of the proposed rule.

The Bureau believes that some consumers with prepaid accounts could receive important benefits in certain circumstances from the additional protections that would be required by the proposed rule. Further, the share of consumers with prepaid accounts who could potentially receive these benefits may grow over time. One group of industry analysts predicts that the GPR segment of prepaid accounts will grow on average 11 percent each year from 2012 to 2016, and there appears to be sustained interest among consumers in using GPR cards as transaction accounts.[477] While the voluntary provision of limited liability and error resolution (including provisional credit) protections might keep pace with this expansion, it is also possible that growth could lead to new forms of product differentiation, including variation in consumer protections.

To the extent that providers sustain increased losses from the requirement to extend Regulation E's limited liability and error resolution regime, including provisional credit requirements, to all prepaid accounts, the proposed provisions may result in decreased access to these products if financial institutions are more apt to close accounts that have repeated or unusual error claims or to limit who can open accounts in the first place. Additionally, the proposed requirements may result in decreased access to these accounts for some consumers if financial institutions implement more rigorous screening requirements. That is to say, financial institutions would have an increased incentive to identify customers who would be likely to make fraudulent error claims and deny them access to these accounts. This screening may, however, also cause some consumers who would not make such claims to be denied access to these accounts. Further, to the extent that the screening technology correctly identifies those individuals who are likely to make fraudulent error claims, negative externalities arising from these individuals' fraudulent claims activities (which benefit these consumers while imposing costs on other consumers and market participants) are reduced.

b. Benefits and Costs to Covered Persons

In general, the potential costs to covered financial institutions arising from the proposed requirements would depend on their current business practices, the number and types of errors that their consumers claim, and any potential future changes that would affect the number and types of errors claimed, separate and apart from the proposed rule. Implementation of the proposed requirements would be simplified by the fact that financial institutions offering prepaid accounts generally keep a central record of transactions and track authorized users.

If adopted, the proposed rule would require that those covered financial institutions that do not currently offer their consumers limited liability and error resolution protections in accordance with Regulation E establish procedures for complying with the proposed requirements or modify existing procedures (depending on their current practices). Specifically, covered financial institutions that do not currently offer these protections would

[470] The Bureau recognizes that the risk of loss is likely different for different types of transactions. For example, one study using data from a large program manager's GPR card portfolio shows that fraud rates differ by transaction type. *See* Kansas City Fed Study, at 72 tbl.6.1. Thus, the size of a typical transaction need not be similar to the size of a typical loss on a transaction (conditional on a loss occurring) since the types of transactions most susceptible to fraud may be relatively high-value or low-value.

[471] *See id.* at 43 tbl.2.1. It is worth noting that the shares of load types reported in Table 2.1 of this study add up to 102 percent.

[472] *See id.* at 43 tbl.2.1, 59 tbl.4.9.

[473] *See* Kansas City Fed Study, at 47 tbl.4.1.

[474] *See* 2012 FRB Philadelphia Study, at 67.

[475] Prepaid cards with periodic self-funded reloads average 5.7 purchases and 6.5 debits per month. Prepaid cards with occasional reloads average 2.0 purchases and 2.3 debits per month, and prepaid cards with periodic non-government direct deposits have 18.1 purchases and 21 debits per month, on average. Kansas City Fed Study, at 50 tbl.4.3, 59 tbl.4.9.

[476] Kansas City Fed Study, at 72 tbl.4.9.

[477] Mercator Advisory Grp., *Tenth Annual U.S. Prepaid Cards Market Forecasts, 2013–2016,* at 16 (Oct. 2013). The graph reports the growth rate in the aggregate amount loaded onto cards. This growth rate approximates the growth rate in the number of accounts as long as the amount loaded per account remains fairly stable, but it would overstate the growth rate in the number of accounts if the amount loaded per account is increasing.

need to develop the capacity to give the required disclosures to consumers, receive oral or written error claims, investigate error claims, provide consumers with investigation results in writing, respond to any consumer request for copies of the documents that the institution relied on in making its determination, and correct any errors discovered under the required timeframes.[478] If unable to complete their investigation within the required timeframe (generally 10 business days), covered financial institutions would be compelled to extend provisional credit and, in the case that a provisionally credited amount is subsequently reversed, notify the consumer.

For those covered financial institutions that do not currently offer limited liability and error resolution protections in the manner required by the proposed rule, the extension of these protections would require the establishment or modification of practices and procedures, as well as employee training. The establishment or modification of these practices and procedures would constitute a one-time implementation cost for those financial institutions that do not currently offer limited liability and error resolution in the manner required by Regulation E, and implementing these procedures would constitute an ongoing cost for covered financial institutions.[479] The costs associated with implementing these procedures would be a function of the number and types of errors that consumers claim which, in turn, may be affected by the composition of the customer base and how those customers use their prepaid accounts.

Errors may vary on many dimensions that affect the cost associated with their investigation.[480] The Bureau spoke with several program managers who immediately resolve disputes involving amounts below a certain de minimis threshold since the amount of funds at issue does not justify the likely cost associated with conducting the investigation. Separately, when an investigation is conducted, resolution times may be affected by the responsiveness of third parties, including merchants and ATM owners, and may be subject to timeframes established by networks or other standard setting bodies.[481] Additionally, the amount of information provided by the consumer and the timeliness of the report can affect the duration of the investigation.[482] For instance, ATM error claims may result from an ATM malfunction that causes the consumer to receive the wrong amount of funds or from unauthorized use. Error claims that occur when an ATM dispenses the incorrect amount of funds are generally resolved when the ATM is balanced; however, in cases involving unauthorized ATM use, it is possible that the investigation may include obtaining and consulting video evidence.

Errors may also vary in terms of their legitimacy. Consumers may assert that an error occurred when one did not occur either to attempt to defraud the financial institution or due to a misunderstanding. Since, under EFTA, the burden is on the financial institution to establish that the transaction in question was not an error, it is possible that the financial institution would be liable for errors that may not be legitimate. Because the financial institution may be held liable for the error unless it can determine the error is not legitimate, it is helpful to classify alleged errors based on whether the financial institution would be ultimately liable for the error as opposed to whether the error actually occurred. Therefore, for the sake of discussion, the Bureau classifies disputes as either substantiated or unsubstantiated.

Substantiated disputes include situations in which the financial institution credits the consumer's account, either because an error legitimately occurred or because an error was illegitimately asserted and the financial institution could not establish that the transaction was authorized.[483] In the case of substantiated disputes, covered financial institutions that do not currently offer limited liability and error resolution rights consistent with Regulation E would incur one-time and ongoing costs associated with training personnel, as well as one-time and ongoing costs associated with information technology support to track reported disputes, investigations, resolutions, and to produce reports for internal audit and potential supervisory review. Ongoing costs associated with conducting investigations would include compensating personnel tasked with dispute intake, obtaining receipts and other documentation from merchants or ATM owners, and communicating investigation findings to the consumer. When the financial institution can neither establish that the electronic fund transfer was authorized nor receive a credit from the merchant or ATM owner, covered financial institutions also would incur costs associated with paying funds to consumers.[484]

Additionally, the proposed rule would require covered financial institutions to extend provisional credit to consumers asserting an error claim when the length of the investigation exceeds 10 business days. In cases where the claim is ultimately substantiated, offering provisional credit represents little additional cost to the financial institution over and above any costs associated with error resolution because the amount credited is ultimately due to the consumer following the investigation. Since the financial institution would be required to pay the claim under the error resolution provision, the only cost to the financial institution associated with expediting the availability of funds is the opportunity cost of those funds as applied to another investment for the applicable period. The Bureau expects that this cost is generally negligible.

In contrast, unsubstantiated disputes occur when the financial institution is able to establish that a transfer was authorized and, therefore, that institution is not ultimately required to

[478] Covered financial institutions often rely on industry partners to perform some or all of these functions.

[479] It is possible that those institutions that currently offer Regulation E compliant error resolution on a voluntary basis would choose to rely on higher-skilled staff or perform additional reviews to assess compliance if the proposed rule were adopted. CFPB, *Understanding the Effects of Certain Deposit Regulations on Financial Institutions' Operations, Findings on Relative Costs for Systems, Personnel, and Processes at Seven Institutions,* at 96 (Nov. 2013), *available at http://files.consumerfinance.gov/f/201311_cfpb_report_findings-relative-costs.pdf .*

[480] In addition, with the proposed requirement to extend provisional credit, there could be additional monetary costs associated with errors that require an extended timeline for investigation aside from the cost associated with the investigation itself.

[481] Payment card network rules may require the merchant acquirer to reply within a specified timeline in certain instances and may, in turn, require merchants to follow the acquirer's time frame for responding to such requests. *See* Visa Inc., *Chargeback Management Guidelines for Visa Merchants* at 24 (2014), *available at http://usa.visa.com/download/merchants/chargeback-management-guidelines-for-visa-merchants.pdf.*

[482] One program manager reported to the Bureau that, in 85 percent of cases, there were 15 or fewer days between the transaction date and the initial notification date. Another program manager reported that in 76 percent of cases, there were 10 or fewer days between the transaction date and the dispute notification date.

[483] Note that in some limited situations, payment card network rules permit the issuer to perform a merchant chargeback and be reimbursed. *See* Visa Inc., *Chargeback Management Guidelines for Visa Merchants,* at 43–88 (2014), *available at http://usa.visa.com/download/merchants/chargeback-management-guidelines-for-visa-merchants.pdf.*

[484] The Bureau spoke with several program managers regarding error resolution, and the rate at which error claims were paid out varied greatly. One program manager paid out roughly half of the claims made (including those credited by the merchant), with under 30 percent paid by the program manager.

return funds to the consumer. In the case of unsubstantiated disputes, covered financial institutions that do not currently offer error resolution rights would incur costs associated with conducting investigations, and covered financial institutions that do not currently offer provisional credit would incur costs associated with crediting accounts when the length of the investigation exceeds 10 business days. Although the financial institution extending provisional credit could subsequently reverse the credit were it able to establish that the transfer was authorized, the consumer may draw down the funds in the interim or intentionally close the account and abscond with the funds.[485] This could result in the financial institution losing all or some of the provisional credit formerly extended. For provisional credit that could be reclaimed, the financial institution would incur a small opportunity cost of those funds as applied to another investment for the period spanning when the funds were granted and when they could be reclaimed. The Bureau expects that this cost generally would be negligible.

To a certain extent, financial institutions would be able to limit losses associated with error claims. In discussions with prepaid account providers, the Bureau learned that financial institutions often close (or could close) accounts that have repeated error claims, thereby limiting their exposure to potential losses, and may add individuals to a watch list. Additionally, industry partners sometimes share information regarding individuals who appear to be instigating fraudulent activity, and one payment card network has plans to create a centralized database to better detect fraud on prepaid cards.[486] The presence or absence of direct deposit, customer tenure, and card use patterns—including the type of merchant and the existence of prior activity at the merchant or ATM—can all be used to predict the likelihood that fraud occurs. If adopted, the imposition of the proposed liability provisions may encourage covered financial institutions to invest in more robust systems to prevent errors to the extent that they do not currently abide by such provisions.

Although most programs reviewed as part of the Bureau's Study of Prepaid Account Agreements provided error resolution with provisional credit, there was some heterogeneity across programs with respect to the error resolution and provisional credit policies. To the extent that concern regarding the absence of a comprehensive Federal regulatory regime governing error resolution is currently limiting consumer adoption of prepaid accounts, providing for Regulation E limited liability and error resolution coverage, with provisional credit, for prepaid accounts—which include person-to-person transfer products—would help to facilitate wider adoption of these accounts and could benefit providers. Additionally, since the costs associated with complying with the proposed rule would vary across covered financial institutions, providers that are already offering these protections may benefit if competitors need to raise prices or degrade quality to cover the costs associated with extending these protections to consumers. However, those providers that are presently offering these protections on a voluntary basis would lose the option of ceasing to offer such protections to consumers in the future were the proposed rule adopted.

4. Requiring the Posting and Provision of Prepaid Account Agreements

The proposed rule would require issuers to submit agreements governing prepaid accounts that they offer to the Bureau on a quarterly basis for posting on a publicly-available Web site established and maintained by the Bureau. *See generally* proposed § 1005.19.[487] Issuers would not be required to submit agreements to the Bureau if they qualify for one of two exceptions; these include (1) a de minimis exception for those issuers that had fewer than 3,000 open prepaid accounts as of the last day of the calendar quarter[488] and (2) a product testing exception for those prepaid products offered to a limited group of consumers and otherwise meeting the requirements specified in proposed § 1005.19(b)(5). Issuers would also be required to post and maintain on their publicly available Web site any prepaid account agreements that the issuer must submit to the Bureau. *See* proposed § 1005.19(c).

In addition to these requirements, proposed § 1009.19(d) would require that issuers provide access to individual account agreements to any consumer holding an open prepaid account, unless such agreements would be required to be submitted to the Bureau pursuant to proposed § 1005.19(b) or posted on the issuer's Web site pursuant to proposed § 1005.19(c). An issuer could fulfill this requirement by posting and maintaining the consumer's agreement on its Web site or by promptly providing a copy of the agreement in response to a consumer's request.[489]

a. Benefits and Costs to Consumers

The proposed provisions would generally increase the amount of information available to consumers regarding prepaid accounts both when shopping for a prepaid account and after acquisition of the prepaid account. Having internet access to account agreements (both on the Bureau's Web site and on the issuer's Web site) would enable suitably motivated consumers to more easily compare the fees, as well as other terms and conditions, of various prepaid account products. By placing this information on the Bureau's Web site, side-by-side comparisons may be facilitated, and third parties would have more readily available access to this information should they want to develop shopping tools for consumer use. By decreasing consumer search costs and generally making available products and their terms more transparent, consumers seeking a prepaid account should benefit from additional competition in the market for such accounts. Increased competition could result in lower prices, higher quality products, or both.

For those consumers who have already acquired their prepaid account, access to the account's terms and conditions, regardless of whether the

[485] One program manager told the Bureau that it was unable to reclaim provisional credit extended in roughly 65 percent of the cases in which a merchant could provide proof that the electronic fund transfer was authorized.

[486] All U.S. Visa prepaid issuing financial institutions and their program managers will be required to report into Visa's Prepaid Clearinghouse Service by June 2015. *See* Press Release, Visa Inc., *Visa Prepaid Clearinghouse Service Creates Centralized Database to Better Detect and Prevent Fraud Schemes on Prepaid Card*s (Feb. 27, 2014), *available at http://investor.visa.com/news/news-details/2014/Visa-Enhances-Industry-Fraud-Detection-on-Prepaid-Cards/default.aspx*. While the Bureau supports industry efforts to reduce fraud, the Bureau cautions that any entities that maintain or furnish watch lists, screening programs, or other similar services should consider whether and how the Fair Credit Reporting Act or other statutes may apply to its activities.

[487] Only those agreements offered to the public as of the last business day of the preceding calendar quarter that have not been previously submitted as well as those agreements that have been amended would be required to be submitted. *See* proposed § 1005.19 (b)(1)(ii) and (iii). In addition, the issuer must notify the Bureau of any prepaid account agreement previously submitted that the issuer is withdrawing. *See* proposed § 1005.19 (b)(1)(iv).

[488] *See* proposed § 1005.19(b)(4).

[489] If the issuer chooses to comply with this requirement by providing a copy of the agreement in response to a consumer request, the issuer would be required to provide the consumer with the ability to request a copy of the agreement by calling a readily available telephone line. The issuer would be required to send to the consumer or otherwise make the copy of the consumer's agreement available no later than five business days after the issuer receives the consumer's request.

account is currently offered to the public, could be helpful should a question arise regarding the terms of the account. Given that some accounts are held for a period of years, it is possible that consumers might misplace the initial disclosures provided with their prepaid accounts. Having the terms and conditions available post-acquisition could be helpful if a consumer wishes to assert an error or if other questions arise regarding the account.

Actual and potential consumer holders of prepaid accounts could also benefit from the requirement that issuers provide prepaid account agreements to the Bureau on a quarterly basis. In addition, knowing that agreements must be provided to the Bureau and posted on a Web site could serve as an impetus for prepaid account issuers to ensure that they are complying with all applicable regulatory requirements.

b. Benefits and Costs to Covered Persons

As a result of the proposed provisions, issuers of prepaid accounts that do not qualify for the de minimis exception would be required to review information for all products, except those qualifying for the product testing exception, on a quarterly basis to determine whether they need to provide any agreements to the Bureau or to notify the Bureau that they are withdrawing an agreement. In addition, issuers would need to ensure that any submission includes the elements described in proposed § 1005.19(b)(1). The Bureau expects that the burden imposed by this reporting requirement would be minimal, as issuers are required to maintain current account agreements for other purposes.

In addition, those issuers of prepaid accounts that are required to submit prepaid account agreements to the Bureau would be required to post prepaid account agreements on their publicly available Web site. Many issuers of prepaid accounts currently make account agreements available on their Web sites, but the proposed rule would require that issuers that do not qualify for the de minimis exception post and maintain any agreements currently offered to the public that do not qualify for the product testing exception. Therefore, issuers would need to ensure that their Web sites include current agreements. The Bureau anticipates that some issuers would need to restructure their Web sites so that required agreements are publicly available. In addition, issuers of payroll card accounts, the terms of which are often individually negotiated with employers, would need to post the agreements for each account that does not qualify for the product testing exception, if the issuer does not qualify for the de minimis exception.

The proposed rule would also require that all issuers provide consumers with access to the agreement for their prepaid account, unless such agreements would be required to be submitted to the Bureau pursuant to proposed § 1005.19(b) or posted on the issuer's Web site pursuant to proposed § 1005.19(c). For those issuers choosing to comply with this requirement by posting the relevant agreements online, the issuer would need to ensure that its Web site includes all agreements for open accounts and to ensure that the online agreements posted online were complete and up-to-date should product offerings evolve. For those issuers choosing to comply with the requirement by mailing a paper copy of the agreement or otherwise making a copy of the agreement available in response to a consumer request, the cost associated with this provision would depend on the frequency with which consumers make requests for such information. Costs associated with fulfilling such requests could consist of customer service agent time spent receiving and responding to a request made via telephone, as well as postage or other materials should the issuer respond to the inquiry with a paper copy of the agreement. Those issuers choosing to comply in this manner would also potentially incur implementation costs associated with training customer service agents to handle such requests and/or changing existing IVR menu options.

5. Requirements Relating to Overdraft Services and Other Credit Features Offered in Connection With Prepaid Accounts

The proposed rule would address overdraft services and other credit features offered in connection with prepaid accounts. Under the proposed revisions to Regulation Z, the Bureau anticipates that, to the extent overdraft services or other credit features are offered in connection with prepaid accounts, those features would meet the definition of ''open-end credit.'' [490] In addition, under the proposal, a prepaid card or account number that accesses such an overdraft service or other credit feature generally would be a ''credit card'' under Regulation Z, and the overdraft services and other credit features (''credit card plans'') described above would therefore be governed by subparts A, B, D, and G of the regulation.[491] In addition, the proposal includes modifications to Regulation E that would be applicable to prepaid accounts that may offer such credit features in connection with the account. As a result of these changes, financial institutions and card issuers would be newly subject to a number of requirements, as summarized below.

Of particular importance to assessing potential impacts, the proposed rule includes provisions that would restrict the type and structure of fees that may be imposed by issuers in connection with credit card plans or by financial institutions in connection with prepaid accounts which are associated with such plans.[492] For example, Regulation Z generally requires card issuers to limit fees (as opposed to periodic interest rates) to 25 percent of the credit limit during the first year after the consumer opens the credit card account. *See* § 1026.52(a). This limit would apply to any per-transaction fees. In addition, the proposed rule would modify Regulation E to specify that on a prepaid account product where a credit card plan may be offered at any point to the consumer in connection with the prepaid account, a financial institution that establishes or holds such a prepaid account may not apply terms and conditions (to transactions solely accessing the prepaid account)—including fee schedules—that differ depending on whether the consumer elects to link such a credit card plan to the prepaid account. *See* proposed § 1005.18(g)(2).

In addition to these restrictions on fee structure, certain provisions of Regulation E and Regulation Z, which would be newly applicable to such accounts and plans, would restrict how

[490] This would generally apply if the creditor establishes a program where the creditor reasonably contemplates repeated extensions of credit for which the creditor assesses fees. *See* section-by-section analysis of § 1026.2(a)(20) (the Regulation Z definition of open-end credit) above for more detail.

[491] Transactions that are authorized on a prepaid account when the consumer has insufficient or unavailable funds at the time of authorization as well as transactions that are paid from a prepaid account when the consumer has insufficient or unavailable funds at the time of payment would generally be considered to be credit under Regulation Z. However, under the proposal, Regulation Z would not apply to overdraft services or other credit features accessed by a prepaid card that are not subject to any finance charge or fee and not payable by written agreement in more than four installments.

[492] Section 1026.52(a) specifies that, other than periodic interest rates, most fees that are charged during the first year after the credit account is opened would be subject to a cap of 25 percent of the initial credit line; § 1026.52(b) would place limits on penalty fees, including a prohibition on fees for transactions that the card issuer declines to authorize; and § 1026.56 would prohibit over-the-limit fees unless the consumer opts-in (and the consumer cannot be charged more than one fee per month if opted-in).

a balance incurred on a credit card plan linked to a prepaid account may be repaid. In Regulation E, the proposal would apply the EFTA compulsory use provision to prepaid accounts with credit features. Accordingly, creditors would not be able to require the repayment of credit extended under a credit feature by electronic means on a preauthorized, recurring basis.[493] In particular, creditors would be required to offer prepaid account consumers a means to repay their outstanding credit balances other than by automatic repayment from the prepaid account (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking Web site). *See* proposed § 1005.10(e)(1). Further, within Regulation Z, the proposal would require that under an authorized repayment plan where issuers may periodically deduct payments from the consumer's deposit account, issuers may not deduct a payment more frequently than once per calendar month and must obtain the consumer's written, signed agreement to automatic repayment. *See* proposed § 1026.12(d). In addition, the proposal would require that periodic statements for the credit card account be mailed or delivered 21 days prior to the payment due date.[494] This ensures a time gap between when a debt is incurred and when it is due to be repaid for all credit card accounts, including those not subject to an authorized repayment plan.

Pursuant to Regulation Z, persons offering such credit card plans would additionally be required to comply with a number of requirements governing solicitation, disclosure, liability, and error resolution. Further, in providing a credit card plan, a card issuer would be required by § 1026.51(a) to establish and maintain reasonable written policies and procedures to consider the consumer's ability to make the required minimum periodic payments under the terms of the plan, based on the consumer's income or assets and the consumer's current obligations. In addition, proposed § 1005.18(g) and proposed § 1026.12(h) would prohibit an issuer from opening a credit card account in connection with a prepaid account, or providing a solicitation or an application for a credit card plan in connection with a prepaid account, any time prior to 30 days after the consumer has registered the prepaid account. Consumers with prepaid accounts who wish to add a credit card plan would be required to make an explicit request or application for the credit line. *See* § 1026.12(a)(1). Were an issuer or other person to offer an overdraft service or other credit feature in connection with a prepaid account, credit card applications and solicitations would need to comply with the requirements specified in § 1026.60. Credit card issuers would also be required to provide the account-opening disclosures required by § 1026.6(b) before the first transaction is made under the credit plan.

Regulation Z also includes a number of disclosure requirements that would apply to credit card plans offered in connection with prepaid accounts in addition to the solicitation or application disclosures and the account-opening disclosures discussed above. Persons offering a credit card plan in connection with a prepaid account would be required by § 1026.7 to provide a periodic statement for each billing cycle in which the account has a debit or credit balance of more than $1 or a finance charge has been imposed. The Regulation Z periodic statement requirements would be in addition to those of Regulation E for the prepaid account.[495] Issuers generally would also be obligated to provide the disclosures described in § 1026.9 when changing terms on the credit card account.

Transactions performed using a credit line established in connection with an overdraft service or other credit feature may be subject to additional liability and error resolution protections that extend beyond those protections afforded to transactions involving funds drawn from a prepaid account. For those transactions subject to Regulation Z's liability limitations, existing § 1026.12(b) restricts consumer liability to $50. By contrast, Regulation E's liability limitations permit a financial institution to hold a consumer liable for up to $500 if the consumer does not report the loss in a timely manner.[496] *See* existing § 1005.6(b). Regulation Z's definition of error is more expansive than Regulation E's definition of error and includes an extension of credit for property or services not accepted by the consumer or the consumer's designee or not delivered as agreed. *See* existing § 1026.13(a). Since Regulation Z and Regulation E specify different liability limitations and error resolution procedures, the proposed rule specifies which limitations and procedures would apply to transactions involving a prepaid account that has a credit feature. For those transactions that exclusively draw on a credit feature, the proposed rule specifies that Regulation Z's liability limitations and error resolution procedures would apply.[497] For those transactions that both debit a prepaid account and draw on a credit feature, Regulation E's liability limitations and error resolution rules, as well as part of Regulation Z's error resolution rules, described in existing § 1026.13(d) and (g), would apply to the transaction. For those transactions that solely debit a prepaid account, the Regulation E liability limits and error resolution rules apply.

In the Bureau's consideration of benefits, costs, and impacts arising from these proposed provisions, the baseline for discussion of these provisions is the current market for prepaid accounts.[498] In addition, in order to more fully inform the proposed rulemaking, the Bureau also discusses, further below, the potential future impacts relative to how the market might evolve absent the proposed rule. Consistent with the discussion of other provisions in this proposal, this baseline incorporates both the existing regulatory structure as well as other economic attributes of the relevant market, most notably the current set of incumbent firms and potential entrants and the underlying preferences of consumers.

The Bureau's understanding is that, at present, a number of providers offer prepaid accounts to consumers. The vast majority of these providers do not offer any credit features in connection with prepaid accounts, and thus would be largely unaffected by the various credit provisions described above.[499] However, one of the largest providers of prepaid accounts offers an overdraft service in connection with its prepaid

[493] However, a creditor may offer an incentive to consumers to agree to repayment by recurring, preauthorized EFTs.

[494] *See* section-by-section analysis of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above.

[495] In addition, as mentioned above, § 1026.5(b)(2) specifies that periodic statements would need to be mailed or delivered at least 21 days prior to the payment due date on the statement.

[496] Irrespective of whether a transaction is subject to the liability limitations of Regulation Z or those of Regulation E, payment card networks' ''zero liability'' programs may further limit consumers' liability for unauthorized transactions.

[497] For those transactions that occur using a prepaid account that does not draw at all on the line of credit, Regulation E's liability limitations and error resolution procedures would apply.

[498] The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and the most appropriate baseline for that particular rulemaking.

[499] As noted above, some account agreements reserve the right to impose negative balance fees, which may fall under the proposed credit provisions. However, the Bureau believes that most providers would withdraw such requirements, which would have minimal impact since these charges do not appear to be imposed frequently at any rate.

accounts (which include GPR cards and payroll card accounts). Although the number of consumers who are eligible for overdraft services in connection with such accounts is not negligible, those regularly using overdraft services represent only a small minority of consumers with prepaid accounts, even for that one provider. A reasonable estimate of the current market indicates that less than one percent of prepaid account holders regularly use overdraft or other credit features.[500] For that reason, the benefits, costs, and impacts arising from these prepaid credit provisions would have only a limited effect on prepaid account consumers generally, as described more fully below.

For the small number of prepaid providers that currently offer overdraft services, the Bureau understands that providers of these accounts condition eligibility on receipt of a regularly-occurring direct deposit over a predetermined amount. Additionally, consumers must affirmatively choose (opt-in to) the service. Therefore, given the current market baseline, consumers may find themselves in one of four categories depending on whether they access (or desire to access) the overdraft service or not and whether they meet the eligibility requirements or not.[501]

In order to more fully inform the proposed rulemaking, the Bureau also discusses potential future impacts relative to how the market might evolve absent the proposed rule. As discussed above, the Bureau's understanding is that few providers currently offer overdraft services in connection with prepaid accounts. The Bureau understands that other firms might be considering doing so in the future, and the proposed provisions could affect the projected future profitability of business plans.

a. Benefits and Costs to Consumers

As detailed further below, the Bureau believes that the proposed requirements concerning disclosures, account opening, liability limitations, and error resolution procedures would provide a number of consumer benefits, mirroring the same benefits that Congress conferred on credit card account holders under Federal law. In some cases the proposals would heighten consumer protections relative to current industry practices, and in other cases the proposal would codify requirements that are largely consistent with current practices but not required as a matter of Federal law. In light of the modest credit limits currently offered in the market, the Bureau believes that these provisions would have minimal impacts on which consumers have access to the credit features, the amount of credit offered, or the payment terms.

The proposed rule includes certain other provisions that, in contrast, would likely incentivize those providers offering a credit feature to change how their prepaid accounts are priced and the terms on which these credit features are offered. These changes could potentially affect which consumers have access to these credit features or which consumers desire these features. In addition, the proposed rule would provide consumers who use such credit features with the recognized benefits associated with the disclosure provisions, liability limitations, billing error rights, and other protections that are provided to consumer holders of credit card accounts.

The benefits, costs, and impacts arising from the proposed provisions would likely vary with the intensity of the consumer's use of overdraft services. Consumers who use prepaid accounts may do so to fulfill different needs. Some consumers who rely on prepaid accounts choose such products to help them control spending or as a budgeting aid.[502] Given this use, some of these consumers likely would not choose to use overdraft or other credit features in connection with their prepaid accounts. Other consumers may desire access to overdraft or other credit features but do not meet current eligibility requirements for such services.

As discussed below, the impacts would be most directly felt by those consumers who presently use prepaid accounts offered by the limited number of providers that offer overdraft services. Among those consumers who use the overdraft services from these providers, some may knowingly rely on overdraft services only occasionally. Other consumers may knowingly overdraft frequently, choosing to rely on these services as a source of credit with regularity. Once an overdraft service is activated, consumers may also unintentionally overdraw their prepaid accounts if they are not closely monitoring their account balances.[503] Some providers currently mitigate this possibility by requiring users to sign up for text or email alerts or by other mechanisms, although they are not required to do so by Federal law.

The Bureau expects that the proposed restrictions on certain fees that may be charged to credit card accounts offered in connection with prepaid accounts would incentivize those providers offering credit features to change their pricing structures. Most notably, other than periodic interest rates, most fees charged during the first year after the credit card account is opened would be subject to the cap of 25 percent of the initial credit line, which already applies to credit cards pursuant to the CARD Act. Similar to the fee structure typically used for checking account overdraft products, those consumers currently utilizing an overdraft service in connection with a prepaid account are generally charged a per transaction fee that does not vary with the size of the overdraft.[504] These fees can be high relative to the amount of credit

[500] Although NetSpend is a significant provider of prepaid accounts, a recent news article reported that only six percent of NetSpend's customers regularly use overdraft. *See* Suzanne Kapner, *Prepaid Plastic is Creeping Into Credit,* Wall Street J. (Sept. 5, 2012), *http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602.* In addition, a larger percentage of accounts would potentially be eligible for their overdraft program. A recent financial filing suggested that NetSpend had 3.4 million active cards as of June 30, 2014 and 47 percent of those active cards had direct deposit. *See* Total Sys. Serv. Inc., Form 10–Q, at 28, *available at http://www.sec.gov/Archives/edgar/data/721683/000119312514300851/d737574d10q.htm* (for the quarterly period ended June 30, 2014). One projection estimates that there are 22.4 million active prepaid debit and payroll cards in the United States as of 2014. *See* Aite Grp. LLC, *The Contenders: Prepaid Debit and Payroll Cards Reach Ubiquity,* at 13 (Nov. 2012).

[501] That is, consumers may either (1) meet the eligibility requirements and use the service; (2) not meet the eligibility requirements and desire to use the service; (3) meet the eligibility requirements and not desire to use the service; or (4) not meet the eligibility requirements and not desire to use the service.

[502] Several studies as well as the Bureau's focus group research indicate that some consumers view spending control or budgeting as a benefit offered by prepaid accounts. *See, e.g.,* 2014 Pew Survey; The Pew Charitable Trusts, *Key Focus Group Findings on Prepaid Debit Cards* (Apr. 2012), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/FSP1201420Pew20DebitCardsR10A4512pdf.pdf*; *see also* ICF Report, at 5.

[503] Prepaid accounts generally do not require a minimum balance, so balances held in these accounts can be quite low. According to one large program manager, the average account balance is less than $100 for prepaid accounts they offer. *See* Examining Issues in the Prepaid Card Market: Hearing before the Subcomm. On Fin. Inst. And Consumer Prot., S. Comm. On Banking, Housing and Urban Affairs, 112th Cong. 2 (2012) (Remarks of Daniel R. Henry, Chief Executive Officer, NetSpend Holdings, Inc.), *available at http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=2bf6b634-fbf6–40d8-a859–3af59300f9d0&Witness_ID=b5fbcae3-a234-4d44-b13a-4f990befafe7* (stating that ''They typically put a few hundred dollars into their card accounts every couple of weeks, and maintain an average balance of less the $100 *[SIC].''*). As a result, consumers may have insufficient funds for even relatively modest purchases.

[504] Although providers may limit the number of fees incurred within a specified time period or opt not to charge for overdrafts that cause an account to go negative by a de minimis amount, this choice is voluntary.

extended. As a consequence, for all but infrequent users of the credit card account, the proposed restriction on fees charged in the first year would be a binding constraint that would translate directly into lower transaction fees to consumers during the first year of their credit card account (conditional on consumers continuing to be eligible for and using a credit feature).[505]

Since this constraint would restrict the level of certain fees, it is possible that providers that offer credit features would respond by raising fees that are not subject to this constraint.[506] These providers could either charge an application fee for access to a credit card account (that would be assessed to the prepaid account prior to the opening of the credit card account), or they could raise other fees charged in connection with the prepaid account that do not relate to the credit feature. Since, under the proposal, a provider offering credit features would be required to offer the same terms and conditions for transactions accessing the prepaid account to all consumers regardless of whether they accept a credit feature, raising fees charged in connection with the prepaid account could result in a decrease in the quantity of prepaid accounts demanded from these providers, while raising an application fee could lead to a decrease in the number of consumers demanding credit.[507] Therefore, fewer consumers may choose to access prepaid accounts from these providers or credit features offered in connection with these providers' accounts if the proposal is finalized and affected providers impose or increase fees not subject to the restriction, as discussed above. It is also possible that providers may choose not to offer credit features in connection with prepaid accounts, or to offer them on different terms or to a more select set of consumers, relative to the present.

Those consumers who use overdraft services infrequently may pay higher prices or use less credit as a consequence of these provisions. For instance, if providers respond to the pricing restrictions by adopting a high application fee for the credit feature, those consumers who anticipate occasional use may not be willing to pay a salient and transparent up-front fee (unless they highly value the possibility of having this credit readily available), and therefore would cease to access the credit feature. This would be a benefit to some consumers, as it may prevent these consumers from inadvertently accessing a credit feature (after having opted-in) and incurring the attendant fees or may cause consumers to avoid accessing this particular form of credit. If an unanticipated need for funds were to arise, however, some of these consumers may need to rely on other potentially higher cost or less convenient credit sources since they would be unlikely to have the funds to pay an application fee at that point.[508] A consumer's need to manage a relationship with an additional financial services provider could also result in some efficiency losses and could render understanding the provider's terms and conditions more taxing and tracking account balances and due dates more costly.

As noted, some consumers who utilize overdraft services with great frequency may do so due to poor account management skills.[509] Other consumers who frequently utilize these services may accurately anticipate their use of these services but still prefer to use an overdraft service or other credit feature associated with a prepaid account because they perceive it to be their best available option for receiving short-term credit. Regardless of the consumer's motivation for frequent use of the credit line, both types of consumers would likely pay lower fees in connection with these services (to the extent that they are able to access such services). As described above, the current fee structure offered by providers would not be permitted for all but occasional users of credit features in their first year of their account (assuming that the size of the credit lines offered remain unchanged).[510] Although providers may impose an application fee or raise other fees associated with the account, such upfront fees are salient to consumers, and a one-time fee of the magnitude of the total fees incurred by a consumer who overdrafts his account frequently is unlikely to be paid by many consumers. For current frequent users adopting credit card plans under the revised pricing structure, the marginal cost associated with accessing the credit card account would likely be lower, and these consumers would have increased incentive to utilize the credit card account once obtained relative to the present.

These changes to the pricing structure could also affect consumers not currently using overdraft. Along with changes in pricing structure, it is likely that the firms offering overdraft services or considering doing so would also alter their own eligibility criteria and that some consumers who are currently eligible or would otherwise become eligible may lose or not obtain eligibility. The change in pricing structure could also change the opt-in trade-offs among consumers who currently have not opted-in.

Restricting how a balance incurred on a credit feature offered in connection with a prepaid account may be repaid would provide potential benefits to consumers. Specifically, the prohibition on offsets that would apply to the credit card account would permit consumers additional discretion over how funds deposited into prepaid accounts are used to pay off debts incurred on an associated credit card account. Consumers would have access to the funds in their prepaid account before a creditor, and they could decide whether those funds should be used to pay off any outstanding debts or for another use. Card issuers only would be permitted to sweep funds periodically from the prepaid asset account with the consumer's written authorization (and

[505] For instance, consumers may pay $15 per overdrawn transaction to access a credit line of $100. *See,* Comment Letter, Nat'l Consumer Law Ctr. et al., *NCLC Prepaid Card Comments Final,* Consumer Financial Protection Bureau docket CFPB–2012–009, at 8 (resubmitted July 23, 2012), *available at http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0019-0218.*

[506] Under the assumption that prepaid account providers are profit-maximizing firms, the fact that providers that offer credit features in connection with their prepaid accounts are not offering such a fee structure at present suggests that these providers' profits would decrease with this alternative fee structure.

[507] This could result from moving from an add-on pricing model to a model where the cost for access to the credit feature is borne upfront (and is therefore more salient for consumers). At present, the Bureau does not believe that consumers are presently charged a fee for opting in to overdraft services or other credit features offered in connection with prepaid accounts.

[508] The extent to which this is true would depend on the size of the fee charged to establish access to the credit feature and the size of the credit line available.

The fees charged presently for overdraft services in connection with prepaid accounts, which generally range from $15 to $25 per transaction, are generally lower than chose charged for overdrafts from a checking account. According to data obtained from one research firm, the Bureau found that the median overdraft fee among the 33 institutions that the source monitors was $34 in 2012 and the median overdraft fee across nearly 800 smaller banks and credit unions was $30 in 2012. *See* CFPB Overdraft White Paper, at 52.

[509] According to one study, 41 percent of prepaid users who have ever had a checking account have either closed a checking account themselves or have had an account closed by an institution because of overdraft or bounced check fees. *See* 2014 Pew Survey, at 8.

[510] As discussed above, once a consumer has opted-in to a credit feature offered in association with a prepaid account, these consumers generally pay a per-transaction fee per overdraft that does not vary with the size of the overdraft. At present, there is generally no fee associated with opting-in to a credit feature offered in association with a prepaid account.

no more often than once per calendar month), meaning that consumers could benefit from additional control of their funds during the intervening period. In addition, the proposal would require that periodic statements for the credit card account be mailed or delivered 21 days prior to the payment due date. Practically speaking, this requirement would ensure a gap between when debts are incurred and when they are due to be repaid and would enable consumers to have access to funds that may ultimately be used to pay off a balance in the credit card account during the intervening period.

Decreasing the likelihood that debt payments are automatic would increase the onus on the consumer to remember to pay a debt and to budget for the debt's payment. This could result in some consumers unintentionally not paying the credit card debt and incurring more or higher fees (if, for example, providers offering credit features were to begin to assess late fees), or experiencing other adverse effects such as an inability to access additional credit, although consumers could conversely choose to spend the funds in their prepaid account on something they deem to be a higher priority than the credit card debt.

At the same time, the proposed rule's restrictions on the ability of a card issuer to apply the funds in the prepaid asset account to debts outstanding in the credit card account would increase the risk borne by providers and (at least in the absence of countervailing measures) would generally make offering credit features in connection with prepaid accounts less profitable for providers. Consumers could incur some of these costs since, in order to compensate for that risk, those card issuers offering a credit feature could offer less credit to consumers, charge higher fees for credit extended, or both relative to the present.[511]

The proposed rule would require that persons offering credit card plans in connection with prepaid accounts adhere to certain timing restrictions governing when a credit feature may be opened or offered to a consumer which provides some transparency to the consumer and assurance that the consumer has the opportunity to become informed and consider options when applying for credit.[512] Additionally, credit card issuers would be required to establish and maintain reasonable written policies and procedures to consider the consumer's ability to make required minimum payments when deciding to offer a credit card account to a consumer. These requirements are not expected to impact consumer access to credit generally beyond the impacts of other provisions already mentioned. Creditors can assess consumers' ability to pay at low cost, and as long as credit limits remain low it would be relatively easy for consumers who have or are eligible to have prepaid overdraft to be deemed able to make the minimum periodic payment on the small amount of credit currently extended in connection with these services.

The impact of the requirement to consider the consumer's ability to make required minimum payments when deciding to offer a credit card account to a consumer would also be attenuated should the proposed rule's restrictions on the ability of a card issuer to apply the funds in the prepaid asset account to debts outstanding in the credit card account be adopted. As noted, these latter provisions would increase the risk borne by providers and, as a result, they should have an increased incentive to verify the consumer's ability to pay, even absent this new provision.

Under the proposed rule, overdraft services and other credit features offered in connection with prepaid accounts would be characterized as credit, and fees assessed for accessing that credit would be characterized as finance charges. The proposed rule would impose distinct requirements for disclosure, liability limitations, and error resolution procedures for the prepaid account and the credit feature. These protections would directly benefit consumer holders of prepaid accounts that have a credit feature.

Periodic statements and other disclosures required by the proposed rule would enable consumers to monitor their credit card accounts. Consumers would potentially receive separate periodic statements for their credit card account and their prepaid account (or for the prepaid account, an electronic history of transactions), though providers are permitted to combine the two periodic statements if the requirements of Regulation E and Regulation Z are met in the combined statement. The periodic statement requirement would ensure that consumers receive important information regarding transactions performed and fees incurred using their credit card account. Providers may not disclose all information that would be required regarding the credit card account absent this requirement. As noted above, transactions solely accessing the credit card account would be subject to different, stronger limited liability and error resolution protections than those transactions that do not access the credit card account.[513]

As an alternative, the Bureau also considered, among other options, extending the Regulation E overdraft opt-in regime (§ 1005.17) to prepaid accounts. To the extent that current providers of overdraft services offered in connection with prepaid accounts appear to be providing overdraft services consistently with these requirements, any impacts on consumers would be limited using the current market as the baseline for analysis, though this approach would forgo all of the benefits to consumers of applying the requirements of Regulation Z to prepaid accounts, as discussed above.

b. Benefits and Costs to Covered Persons

This discussion covers many of the same issues already addressed in the preceding section. As noted above, the proposed rule would introduce additional requirements for the relatively few providers that currently offer overdraft services or other credit features to consumers in connection with prepaid accounts. By restricting the terms on which credit features offered in connection with prepaid accounts may be offered to consumers, this may threaten the economic viability of certain business practices or business plans among the small number of providers currently offering credit features in connection with a prepaid account. In addition, the proposed rule would require that covered persons provide certain disclosures and adhere to certain processes in connection with the solicitation of consumers and the subsequent extension of credit, which would likely require restructuring existing programs to meet the requirements of the proposed rule. In addition, these provisions would affect any plans by other providers to offer credit card accounts in connection with prepaid accounts in the future, by precluding such providers from offering credit features in a manner that is inconsistent with the proposal's

[511] The proposed rule would introduce restrictions on the magnitude of certain fees charged in connection with these credit card accounts.

[512] A consumer would be prevented from completing the application process for a credit card account offered in connection with a prepaid account until after 30 days had elapsed following the completion of the customer verification processes for the associated prepaid account.

[513] Those transactions that access both the prepaid asset account and the credit card account generally would be subject to Regulation E's liability limitations and error resolution procedures, as well as part of Regulation Z's error resolution rules, described in existing § 1026.13(d) and (g).

requirements but potentially more profitable for the providers. For example, the proposed rule's provision preventing providers from offering terms and conditions that vary according to whether the consumer accepts a credit card account would preclude providers from offering certain pricing structures. These additional restraints are neutral at best and would most likely reduce potential profits relative to options that providers could choose to implement in the absence of such a requirement.

The proposed rule would limit the types of fees that may be charged during the first year after the credit card account is opened. Among other things, most fees (other than periodic interest rates) charged during the first year after the credit card account is opened would be subject to a cap of 25 percent of the initial credit line. As discussed above, this could result in some consumers paying less in fees covered by the cap, but any resulting reduction in revenue could be offset to some extent if providers of overdraft services and other credit features offered in connection with prepaid accounts were to decide to restructure their fee schedules away from the current pricing structure that relies on transaction-based fees. Providers may adopt a pricing structure in which a fee is collected during the application process and prior to the establishment of the credit card account (and thus is not subject to the cap) or one which raises other fees that are unrelated to the credit feature, though the latter approach would potentially put these providers at a competitive disadvantage with respect to those consumers who do not desire overdraft services or other credit features in connection with their prepaid accounts.

With the restructured fee schedules, the small group of providers that currently offer overdraft would likely earn less revenue from offering overdraft services or other credit features in connection with prepaid accounts than they do at present.[514] For current product offerings, a fee cap at 25 percent of credit line would be binding for any consumer who incurs more than one overdraft fee per year.[515] When faced with the option of paying for overdraft services prior to an overdraft being incurred, consumers may be less willing to incur upfront charges for the service. Since these providers would be required to offer the same terms and conditions to all consumers regardless of whether they accept a credit feature in connection with their account, raising fees aside from an application fee could decrease the overall quantity of prepaid accounts demanded by consumers from these providers.

In addition to these costs, the proposed rule would restrict a creditor's ability to access a consumer's prepaid account to pay debts incurred on the associated credit card as well as the requirement that funds may be swept from the prepaid account only periodically to repay a debt, which would increase the risk of default.[516] In addition, the proposed rule's requirement that periodic statements for the credit card account be mailed 21 days before the due date for any payment ensures a delay between when a debt is incurred and when it must be repaid. To manage this additional risk, those card issuers with a credit offering, or those considering doing so, may choose to offer less credit to consumers, to charge higher fees for credit extended, or both.

To comply with the proposed rule, the relatively few providers that currently offer overdraft services and other credit features in connection with prepaid accounts would incur implementation costs in transitioning and educating consumers about any product changes, in developing new disclosures, and in designing and implementing new procedures. Card issuers wishing to offer credit card accounts in connection with prepaid accounts would need to ensure that solicitations and application materials conform to the requirements specified in Regulation Z. This may require the production of a new disclosure or the modification of an existing disclosure. Card issuers additionally would be required to ensure that any opening of a credit card account in connection with a prepaid account, or any solicitation or application to open such a credit card account provided to a consumer holder of a prepaid account, does not violate the timing requirements specified in the proposed rule.

Card issuers would be required to establish and maintain reasonable written policies and procedures to consider the consumer's ability to make required minimum payments when deciding to offer a credit card account to a consumer in connection with a prepaid account. As noted above, these provisions should involve minimal additional burden beyond the impacts of other provisions already mentioned as creditors can assess consumers' ability to pay at low cost and virtually all consumers who have or are eligible to have prepaid overdraft today likely could be deemed to have the ability to make the minimum periodic payment on the small amount of credit currently extended on prepaid overdraft.

Once a credit card account is established in connection with a prepaid account, card issuers would incur some ongoing costs as a result of the proposed provisions. These include costs associated with the proposed rule's periodic statement requirement as well as the requirement that additional disclosures be provided in certain circumstances, such as when certain account terms are changed. Specifically, card issuers would incur costs associated with designing these disclosures and ensuring that such disclosures comply with Regulation Z. In certain instances, card issuers would incur costs associated with printing and distributing these disclosures, though they could mitigate some of these costs by obtaining E-Sign consent from the consumer. Finally, to the extent that Regulation Z's liability limitations and error resolution provisions apply, card issuers may incur additional costs due to more restrictive limitations on consumer liability and an expanded definition of error as compared to Regulation E.

The new requirements, described above, could impact consumer choice. As a consequence, the small number of providers that currently offer credit in connection with prepaid accounts may experience changes in the size or composition of the customer base seeking to associate a credit feature with a prepaid account and could experience revenue impacts arising from these changes. An individual provider may experience such revenue impacts due to adjustments in aggregate market demand or due to substitution by consumers to or from other providers within the market. For instance, if the proposed provisions result in providers that offer overdraft charging higher fees for their prepaid accounts more generally or ceasing to offer overdraft

[514] At present, providers have the option of offering consumers a fee schedule that would be compliant with the proposed rule's provisions. These additional restrictions could only constrain providers relative to the present.

[515] As described above, current transaction-based charges for overdrafts (in excess of those for de minimis amounts) range from $15 to $25. Assuming a credit line of $100, this means that at most one overdraft fee (or $25) could be collected in the first year with the new restriction. It is possible that providers would be willing to extend larger credit lines, but they would incur more risk in doing so and would likely need to develop more robust underwriting procedures to ensure a sufficient return and compliance with Regulation Z's ability to pay requirement.

[516] Sweeps additionally require the consumer's consent. Firms would lose access to funds for a longer period of time due to delays in repayment time and would incur a small opportunity cost associated with losing access to these funds. Some of these costs may be passed on to consumers in the form of higher prices.

services (and therefore offering a product that may be regarded as less desirable by consumers who value the overdraft feature), prepaid account providers that do not offer overdraft services presently could benefit as consumers substitute away from those providers that offer overdraft services.

In terms of alternatives, the Bureau also considered extending the Regulation E opt-in regime to prepaid accounts. To the extent that current providers of overdraft services offered in connection with prepaid accounts appear to be providing overdraft services consistently with these requirements, the benefits, costs, and impacts arising from such an approach would be limited, though again it would not bring these products into compliance with the requirements of Regulation Z, as discussed above.

F. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

With respect to most provisions, the Bureau does not expect that the proposed rule would have a unique impact on depository institutions and credit unions with $10 billion or less in total assets as described in Section 1026. One exception pertains to the provisions addressing overdraft services or other credit features offered in connection with prepaid accounts. Issuers with consolidated assets of less than $10 billion are exempt from Regulation II's restrictions on debit interchange fees. *See* § 235.5(a). Additionally, interchange restrictions do not apply to electronic debit transactions made using debit cards provided pursuant to certain government-administered payment programs and certain reloadable, general-use prepaid cards not marketed or labeled as a gift card or gift certificate. *See* § 235.5(b) and § 235.5(c). However, these exemptions do not apply if a fee or charge for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance, may be charged to a cardholder (unless the fee or charge is imposed for transferring funds from another asset account to cover a shortfall in the account accessed by the card). *See* § 235.5(d)(1).[517] Since institutions with greater than $10 billion in assets that offer overdraft services in connection with a prepaid account would be subject to Regulation II's restrictions on debit interchange fees, they presently have less incentive to offer such credit features than similarly-situated depository institutions with less than $10 billion in assets. Therefore, the new consumer protections applicable to credit card accounts articulated in this proposal are more likely to impact those institutions with less than $10 billion in assets.

The proposed requirements would be applied uniformly across covered financial institutions without regard for their asset size.[518] Among those depository institutions and credit unions that the Bureau believes would be potentially affected by the proposed rule, roughly 72 percent have $10 billion or less in total assets.[519] The impact of the proposed rule on depository institutions and credit unions would depend on a number of factors, including whether the institution offers prepaid accounts, the relative contribution of prepaid accounts to firm revenues, and the cost of complying with the rule—which would depend on the present prepaid account offerings as well as regulations to which those accounts are currently subject.

The Bureau solicits comment regarding the proposed rule's impact on those depository institutions and credit unions with $10 billion or less in total assets and how those impacts may be distinct from those experienced by institutions of larger size.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

Consumers in rural areas may experience benefits from the proposed rule that are different in certain respects from the benefits experienced by consumers in general. Consumers in rural areas may differ from other consumers in terms of their reliance on prepaid accounts as well as their ability to use online disclosures for shopping by accessing the internet.[520] The Bureau is not aware of evidence which states whether consumers in rural areas are more likely to acquire prepaid accounts, to use prepaid accounts that do not presently follow Regulation E's limited liability and error resolution regime, or to use prepaid accounts that offer overdraft services or other credit features.[521] The Bureau requests comment regarding these issues.

G. Request for Information

The Bureau will further consider the benefits, costs, and impacts of the proposed provisions before finalizing the proposal. As noted above, there are a number of areas where additional information would allow the Bureau to better estimate the benefits, costs, and impacts of this proposal and more fully inform the rulemaking. The Bureau asks interested parties to provide comment on various aspects of the proposed rule, as detailed in the section-by-section analysis discussion above. The Bureau specifically requests precise cost or operational data that would permit it to better evaluate the potential implementation costs and ongoing operational costs imposed by the proposed provisions as well as any alternatives under consideration. The most significant of these include information or data addressing:

- The benefits and costs associated with the proposed provisions addressing overdraft services and other credit features offered in connection with prepaid accounts;
- The impact of the proposed provisions addressing overdraft services and other credit features on consumer access to credit;
- The benefits and costs associated with extending provisional credit to all covered accounts;
- The impact of extending provisional credit to all covered accounts on consumer access to prepaid accounts generally;
- The benefits and costs associated with implementing the disclosure requirements articulated in the proposal;
- The Study of Prepaid Account Agreements and the extent to which its findings are or are not representative of the market for prepaid accounts as a whole; and
- The impact of the proposed rule on consumers in rural areas and

[517] *See* 76 FR 43394 (July 20, 2011).

[518] The de minimis exception for providing prepaid account agreements to the Bureau and posting them to a Web site is a function of the number of open accounts, not the asset size of the issuer.

[519] Figures were obtained using asset sizes reported as of December 2013. Depository institutions and credit unions offering white label programs and programs through certain agent relationships were not included in arriving at this statistic.

[520] Broadband availability may be more limited in rural areas. *See* Nat'l Telecomm. and Info. Admin., *U.S. Broadband Availability: June 2010—June 2012* at 10, (May 2013), *available at http://www.ntia.doc.gov/files/ntia/publications/usbb_avail_report_05102013.pdf.*

[521] One study finds that consumers living in rural areas were more likely to deposit tax refunds onto a prepaid card than consumers in urban areas. *See* Caroline Ratcliff, et al., Urban Inst., *Prepaid Cards at Tax Time and Beyond,* at 26, (Mar. 2014), *available at http://www.urban.org/UploadedPDF/413082-prepaid-cards-at-tax-time-report.pdf.* Another study reports prepaid debit card use by metropolitan status. There was not a robust relationship between whether a household was in a metropolitan area and prepaid debit card use. *See* Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households: Appendices,* at 41 (Oct. 2014) *available at https://fdic.gov/householdsurvey/2013appendix.pdf.*

specifically how these impacts may differ from those experienced by other consumers.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[522] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[523]

An IRFA is not required for this proposed rule because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.[524]

A. Overview of Analysis

The analysis below evaluates the potential economic impact of the proposed rule on small entities as defined by the RFA.[525] It establishes that the only small entities that are likely to potentially experience a significant economic impact from the proposed rule are those that currently (1) do not provide limited liability protections to consumers, (2) do not provide error resolution protections to consumers, or (3) offer overdraft services or other credit features in connection with prepaid accounts.

Based on the Bureau's understanding of the market, which was arrived at through the Study of Prepaid Account Agreements, outreach to interested stakeholders and other regulatory agencies, and review of existing industry studies, the Bureau has determined that very few small banks or credit unions are likely to be directly affected by the proposed rule.[526] As discussed in detail below, these small banks and credit unions each represent a fraction of one percent of all small banks and credit unions. In addition, the Bureau identified 96 small or potentially small non-bank entities that would be likely to be directly affected by the proposed rule. The Bureau has also determined that almost all such entities presently provide limited liability and error resolution protections to consumers, and very few presently offer overdraft services or other credit features in connection with prepaid accounts.[527] As discussed in detail below, the number of small or potentially small non-bank entities that would experience a significant economic impact is a very small percentage of all relevant small non-bank entities. Therefore, the Bureau concludes that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Number and Classes of Directly Affected Entities

The provisions of the proposed rule would apply to any account that meets the criteria described in proposed § 1005.2(b)(3). Providers of these products include issuers and program managers. Prepaid account issuers are typically banks and credit unions, and program managers are typically non-banks. Some issuers act as program manager for some or all of their programs as well. While the proposed rule does not directly regulate prepaid program managers for RFA purposes, the Bureau exercises its discretion to take a comprehensive approach and to consider both prepaid account issuers and program managers in determining whether the proposed rule would have a significant economic impact on a substantial number of small entities.[528]

Since the Bureau is not aware of a comprehensive list of entities that actively issue or manage prepaid accounts or a comprehensive list of prepaid account programs, the Bureau compiled its own list of known prepaid account issuers and program managers based on its review of publicly available information and outreach to industry.[529] The number of banks, credit unions, and non-bank entities identified by the Bureau as likely to be directly affected by the proposed rule are reflected in Table 1. Table 1 also gives context to those counts by also reporting the total number of entities, as well as the total number of small entities, within each relevant NAICS code.[530] For the purpose of this analysis, the Bureau considers directly affected non-bank entities to fall within NAICS code 522320 (Financial transactions processing, reserve, and clearinghouse activities).[531] The Small Business Administration (SBA) considers those banks and credit unions with less than $550 million in assets and those non-bank entities within NAICS code 522320 with average annual receipts less than $38.5 million to be small.[532]

Table 1 also reports the number of directly affected entities the Bureau

[522] 5 U.S.C. 601 *et seq.*

[523] 5 U.S.C. 609.

[524] 5 U.S.C. 605(b).

[525] For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of the Small Business Administration regulations and reference to the North American Industry Classification System (''NAICS'') classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5). Aside from credit unions, the Bureau does not believe that any small not-for-profit organizations would be regulated by the proposed rule for RFA purposes. In its Study of Prepaid Account Agreements, the Bureau did not locate any small governmental jurisdictions that would be regulated by the proposed rule for RFA purposes.

[526] Excluding those banks and credit unions relying on white-label solutions and agent-based relationships, the Bureau identified 19 directly affected small (or potentially small) banks and six directly affected small credit unions. For the purpose of this discussion, the Bureau considers an entity to be directly affected if it presently offers prepaid accounts to consumers.

[527] As discussed below, some of these non-bank entities provide limited liability protections that are less comprehensive than those required by Regulation E. In addition, some of these non-bank entities that otherwise provide error resolution protections consistently with Regulation E offer provisional credit with limitations or do not mention provisional credit in their account terms and conditions.

[528] As discussed below, in determining whether the economic impact is significant, the Bureau compares the total revenues earned by both the program manager and the issuer to the total costs incurred by these entities. In some cases, the same entity performs both the issuing and program management functions, and in other cases, different entities perform these functions.

[529] This compilation includes all issuers and program managers whose prepaid account agreements were included in the Study of Prepaid Account Agreements. The Bureau also included other issuers and program managers identified even though account agreements for their prepaid programs were not located by the Bureau in its review of publicly available information and outreach to industry.

[530] The North American Industry Classification System (''NAICS'') is the standard used by the SBA to match small business size standards to industries.

[531] According to the Census Bureau, NAICS code 522320 corresponds to ''establishments primarily engaged in providing one or more of the following: (1) Financial transaction processing (except central bank); (2) reserve and liquidity services (except central bank); and/or (3) check or other financial instrument clearinghouse services (except central bank).'' One illustrative example given by the Census Bureau is ''electronic funds [*sic*] transfer services.'' *See* U.S. Census Bureau, *2007 NAICS Definition, available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522320&search=2007.*

NAICS code 522320 was relied upon in FinCEN's Prepaid Access Rule. *See* 76 FR 45403, 45414 (July 29, 2011).

[532] *See* U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (July 2014), *available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

believes to be small or ''potentially small.'' [533] In order to determine which directly affected entities are small or potentially small, the Bureau compiled asset size information for directly affected banks and credit unions and receipt estimates for directly affected non-bank entities.[534] For banks and credit unions, assets were determined by averaging the assets reported in the institution's four quarterly Call Report entries for 2012, and institutions reporting an average of under $550 million in assets across the four quarters were considered to be small. Receipt estimates for non-bank entities were obtained by reviewing publicly available information regarding firm revenues, and those entities estimated to have under $38.5 million in average annual receipts were considered to be small.[535]

As shown in Table 1, the Bureau identified 19 directly affected small or potentially small banks and six directly affected small credit unions. These entities constitute less than one percent of small banks and credit unions.[536] This fraction does not comprise a substantial number of small entities under the RFA.

Directly affected non-bank entities are primarily prepaid program managers, although there are issuers of P2P payment products and other non-Visa or MasterCard branded prepaid products as well. The Bureau has identified a total of 127 non-bank entities likely to be directly affected by the proposed rule. Among those, a size classification could be made for 44 entities, with approximately 30 percent of those entities for which a classification could be made (13 entities) classified as small. It is likely, however, that many of the 83 non-bank entities for which a classification could not be made are small as well and are thus referred to herein as ''potentially small.'' Applying the conservative assumption that all of the non-bank entities that could not be classified are small, the number of directly affected small or potentially small non-bank entities is a modest percentage of all small entities within the relevant NAICS code (four percent).[537] This does not comprise a substantial number of small entities under the Regulatory Flexibility Act.

[533] Since many of the directly affected non-bank entities are privately-held firms, information regarding their size was difficult to obtain, so a reliable size classification could not be made in many instances. In addition, there were multiple banks with the same name in one instance, and a size classification could not be obtained. Therefore, out of an abundance of caution, the Bureau's analysis considers any entity for which a size classification could not be made to be ''potentially small.''

[534] The Bureau uses revenue estimates to proxy for receipts.

[535] When available, the Bureau used publicly available revenue estimates for 2012. If revenue estimates from 2012 were not available, available information from recent years was used.

[536] Although the Bureau includes the common issuer of record and program manager for prepaid accounts offered through white-label programs, agent-mediated relationships, or other similar arrangements in the entity counts reported in Table 1, the Bureau does not include individual agent or member banks and credit unions in these counts (to the extent that they could be identified as such by the Bureau). In the traditional white label model, banks and credit unions rely upon another institution to issue prepaid accounts, which may be branded with the bank or credit union's name. There are a handful of such programs through which banks and credit unions, including some that are small, offer prepaid accounts (typically as a convenience to their customers or members). In addition, the Bureau is aware of a program in which the participant bank is the prepaid account issuer, but the bank relies on an external party for BIN sponsorship. While inclusion of these entities would result in a larger number of directly affected small banks and credit unions than is reported in Table 1, the Bureau believes that few of these entities, if any, would experience a significant economic impact from the proposed rule, as the Bureau's understanding is that prepaid accounts offered through these arrangements generally provide limited liability and error resolution protections, and overdraft services or other credit features are not offered in connection with these prepaid accounts.

[537] In its Regulatory Flexibility Act analysis, FinCEN narrowed its count to those entities that are within NAICS code 522320 and perform either electronic fund transfers or electronic financial payment services, relying on commercial database information (Dun and Bradstreet, D&B Duns Market Identifiers Plus (US)). FinCEN estimated that there were 700 entities that shared this classification. Using the SBA threshold of $7 million in average annual receipts that was in effect at the time, FinCEN estimated that 93 percent, or 651, of these entities were small.

Using the denominator relied upon by FinCEN in its rulemaking, referenced above, directly affected small or potentially small non-bank entities comprise, at most, 15 percent of all small entities within that narrower set of entities. At present, the SBA considers entities within NAICS code 522320 with under $38.5 million in average annual receipts to be small. Therefore, assuming the total number of entities meeting the criterion for this narrower classification is unchanged, at least 651 entities would be considered to be small since the threshold has increased.

Table 1: Covered Providers and Directly Affected Small Entities

Category	NAICS Code	Total Entities[a]	Total Small Entities[b]	Directly Affected Entities Identified	Directly Affected Small Entities and Potentially Small Entities Identified	Directly Affected Small Entities Identified
Commercial Banking[c]	522110	7,150	5,939	71	19	18
Credit Unions	522130	6,960	6,582	16	6	6
Non-Bank Entities	522320	2,489	2,359	127	96	13

[a] For banks and credit unions, the total entity count includes those entities operating in the fourth quarter of 2012 as indicated by their respective call reports. For non-bank entities, total entity counts are derived from the U. S. Census Bureau's Statistics of U.S. Businesses ("SUSB").

[b] The SBA's small entity threshold for commercial banks and credit unions is $550 million in assets, and the SBA small entity threshold for NAICS code 522320 is $38.5 million in average annual receipts.

In order to determine which banks and credit unions are small, the quarterly asset sizes (for 2012) for those entities operating as of the fourth quarter of 2012 were averaged, and those banks and credit unions averaging less than $550 million in assets were classified as small. For those entities only operating for part of the year, the quarters from which assets were available were used to obtain the average.

The total number of small non-bank entities was derived from the firm count reported in the latest available SUSB (2011) using the percentage of entities within the reported NAICS code that were small during the last year in which receipts size is available (2007). Roughly 95 percent of firms were small (2,110/2,226) in the 2007 receipts data, and that percentage is applied to the latest available SUSB counts (2011) to obtain the estimated number of small entities.

[c] All banks are included here regardless of charter type. The vast majority of directly affected bank entities are commercial banks (and correspond to NAICS Code 522110), although there are five savings banks, one savings and loan association, and one industrial bank included in these counts.

Note: Counts exclude white-label and agent bank program participants to the extent that they were identified by the Bureau.

C. Impacts of Proposed Provisions on Directly Affected Entities

To determine whether the economic impact of the proposed rule is likely to be significant for directly affected small entities, the Bureau compares the costs potentially incurred by these entities as a result of the proposed provisions to an estimate of revenues earned.[538] Less than one percent of small banks and credit unions and roughly four percent of small or potentially small non-bank entities—a non-substantial number under the RFA—could be directly affected by the proposed rule. Nonetheless, to better inform the proposed rulemaking, the Bureau analyzes the impact of the proposed rule on directly affected small or potentially small non-bank entities. The Bureau uses the current market as the baseline.

The major provisions of the proposed rule are summarized below. Although several proposed provisions potentially impose burden, the Bureau believes that most burdens imposed by the proposed rule are minimal given current business practices. One relevant exception pertains to potential burdens related to the proposed extension of Regulation E's limited liability and error resolution regime, including provisional credit requirements, to all prepaid accounts (except those that have not completed the customer identification and verification process).[539] A second exception is the potential burdens associated with the proposed provisions relating to overdraft services and other credit features offered in connection with prepaid accounts.

The proposed rule includes additional provisions that are not discussed further since their impact on small entities is expected to be limited. Although the provisions related to overdraft services and other credit features potentially impose a significant economic impact on those entities offer such services in connection with prepaid accounts, the Bureau's understanding is that, at most, one small or potentially small non-bank entity would be directly affected.[540] In

[538] When the functions required to offer prepaid accounts are not performed by one, vertically-integrated firm, the exact division of revenue streams between the issuer and the program manager for a given prepaid program varies. In this analysis, the Bureau does not take a position as to whether the prepaid account issuer or the program manager assumes the burdens imposed by the proposed provisions. However, it is worth noting that a program manager that assumes fraud risk likely has the ability to control fees charged to consumers, to control screening procedures, or to take other actions to mitigate fraud losses.

[539] These protections are currently required for payroll card accounts and government benefit accounts. The proposed exception for unverified accounts would not extend to any payroll card accounts or government benefit accounts.

[540] As discussed above, the Study of Prepaid Account Agreements suggested that some prepaid programs, according to their terms and conditions, reserve the right to impose a fee for a negative balance on a prepaid account. (These programs' agreements typically state that the cardholder is not permitted to spend beyond the balance in the prepaid account, but if circumstances were to occur that cause the balance to go negative, a fee will or may be imposed. Some agreements state that repeated attempts to spend beyond the card balance will or may result in the prepaid account being closed). Roughly 10 percent of reviewed agreements noted such a charge. Based on its outreach, the Bureau has doubts as to whether, in practice, these charges are assessed and requests comment regarding current industry practice.

In addition, one source suggests that overdraft fees may be collected by a handful of government benefit card programs, but the Bureau is not certain whether such fees are currently being assessed as it understands several such programs have ceased charging overdraft fees, and the aggregate value of these fees is relatively modest. *See* Bd. of Governors of the Fed. Reserve Sys., *Report to Congress on Government-Administered, General Use Prepaid Cards,* at 9, (July 2014), *available at http://*

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addition, as described below, the proposed rule includes several pre-acquisition disclosure requirements. Industry participants have told the Bureau that the costs associated with the implementation of these requirements for accounts distributed via the retail channel are meaningful. However, the Bureau's outreach to industry has indicated that small non-bank entities are not likely to distribute prepaid accounts via retail channels (or would distribute a limited part of their portfolios via this channel). Therefore, the Bureau does not further discuss such costs.

1. Limited Liability and Error Resolution Requirements

The proposed rule would require financial institutions offering prepaid accounts to comply with Regulation E's limited liability and error resolution regime, including the requirement that provisional credit be extended to consumers in certain circumstances. For accounts subject to Regulation E's limited liability and error resolution provisions, EFTA places the burden of proof on the financial institution to show that an alleged unauthorized transfer was, in fact, authorized.[541] Specifically, after receiving notice that a consumer believes that an electronic fund transfer was unauthorized, the financial institution must promptly perform an investigation to determine whether an error occurred. Regulation E further states that, if the financial institution is unable to complete the investigation within 10 business days, the institution may take up to 45 days to complete the investigation if it provisionally re-credits the consumer's account for the amount of the alleged error.[542] When the financial institution ultimately can establish that the transfer in question was not an error, it can reverse the provisional credit.

Under Regulation E, a consumer may be held liable for an unauthorized electronic fund transfer resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met. If the consumer provides timely notice to the financial institution within two business days of learning of the loss or theft of the access device, the consumer's liability is the lesser of $50 or the amount of any unauthorized transfers made before giving notice. If timely notice is not given, the consumer's liability is the lesser of $500 or the sum of (1) the lesser of $50 or the amount of unauthorized transfers occurring within two business days of learning of the loss or theft and (2) the amount of unauthorized transfers that occur after two business days but before notice is given to the financial institution.[543]

Regulation E currently applies to certain types of prepaid accounts—namely payroll card accounts and certain accounts used for distribution of government benefits.[544] Further, some prepaid accounts currently provide limited liability and error resolution protections even if not directly required to do so by Regulation E. First, the FMS Rule extends Regulation E's payroll card account protections to prepaid accounts that receive Federal payments. Second, many providers choose to provide these protections to consumers by contract as part of their customer service offerings. Finally, payment card network association rules require that issuers limit consumers' liability and remedy certain errors related to transactions that occur over their networks and may require that provisional credit be extended within a shorter timeframe for losses from unauthorized card use.[545]

Limited Liability Protections. The Bureau's market research, including the Study of Prepaid Account Agreements, strongly suggested that the vast majority of directly affected small or potentially small non-bank entities presently extend some form of limited liability protections to consumers. Table 2 summarizes the Bureau's findings from the Study of Prepaid Account Agreements regarding current industry practice with respect to limited liability for the 96 directly affected small or potentially small non-bank entities identified by the Bureau. Of these 96 entities, the Bureau believes that 15 entities only offer payroll card accounts and therefore are required to provide Regulation E's limited liability protections to consumers at present. Of the remaining 81 entities, the Bureau was able to locate an agreement for at least one prepaid account program for all but 14 entities.

In the Study of Prepaid Account Agreements, the Bureau examined prepaid account agreements' language addressing limitations on consumers' liability for unauthorized transfers to assess whether each program provides by contract the limited liability protections that Regulation E provides with respect to the accounts to which it applies. For each entity for which at least one prepaid account agreement was available and that offers at least one program that is not a payroll card account program,[546] the Bureau classified the entity's limited liability protections as belonging to one of three categories: (1) Liability limitations consistent with Regulation E or better for all reviewed agreements; (2) some liability limitations but less than what is provided for under Regulation E; and (3) no limited liability protections.[547]

The Bureau determined that approximately 75 percent (16 percent + 59 percent) of all small or potentially small non-bank entities likely to be directly affected by the proposed rule currently provide protections consistent with Regulation E or better, as reflected in Table 2. The Bureau found that four percent of small or potentially small non-bank entities provide some liability limitations but less than what is required for accounts under Regulation E for at least one of their programs, and six percent of small or potentially small entities had at least one agreement that does not appear to provide any limited liability protections.[548] The Bureau was unable to locate any account agreements for the remaining 15 percent of small or potentially small non-bank entities.

The final column of Table 2 reports the relative frequency of limited liability protections for the set of directly affected small or potentially small non-

www.federalreserve.gov/publications/files/2014_Prepaid_Cards_Final.pdf (showing $2 million in overdraft fees in 2013).

[541] EFTA section 909(b).

[542] The timeline is somewhat different for certain types of transactions and for new accounts.

[543] Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement in order to avoid liability for subsequent transfers.

[544] Covered government benefit programs currently do not need to provide periodic statements or online access to account information as long as balance information is made available to benefits recipients via telephone and electronic terminals and a written account history of at least 60 days is given upon request (the proposed rule would change this). Needs-tested EBT programs established or administered under State or local law are exempt from Regulation E via § 1005.15(a). The proposed rule would not impact such programs.

[545] *See, e.g., Visa Inc., Zero Liability, http://usa.visa.com/personal/security/zero-liability.jsp#anchor_2* (last visited Nov. 3, 2014). *See, e.g., MasterCard Inc., Zero Liability Protection http://www.mastercard.us/zero-liability.html* (last visited Nov. 3, 2014).

[546] The Bureau did not identify any directly affected small or potentially small non-bank entities that exclusively offer government benefit programs.

[547] The Bureau reviewed available prepaid account agreements, as described in the Study of Prepaid Account Agreements. In some instances, a small or potentially small non-bank entity is involved with multiple programs that appear to provide different levels of limited liability protection. When a non-bank entity offered multiple programs which fall into different categories of coverage, the entity was classified according to the program providing the lowest level of protection for consumers. This approach was also taken with respect to the error resolution policy classifications discussed below.

[548] One of these six entities also does not provide error resolution protections (see below).

bank entities for which the Bureau was able to locate an agreement for at least one program (or which only offer payroll card accounts). Within this narrower group of entities, 88 percent (18 percent + 70 percent) presently provide liability limitations consistent with Regulation E or better for all reviewed programs, and thus, would not need to change their practices if the proposed rule were adopted. An additional five percent provide some liability limitations for at least one of their programs and thus would incur only a portion of the total burden arising from the extension of limited liability protections.[549]

Table 2: Current Industry Practice with Respect to Limited Liability Among Directly Affected Non-Bank Entities of Small or Potentially Small Size

Current Business Practice	Number of Directly Affected Small or Potentially Small Non-Bank Entities	Percent of All Directly Affected Small or Potentially Small Non-Bank Entities	Percent of Directly Affected Small or Potentially Small Non-Bank Entities (among the 82 that either only offer payroll card programs or have at least one available agreement)
Compliant Because Only Offers Payroll Card Accounts	15	16%	18%
Liability Limitations Consistent with Regulation E or Better (for all reviewed agreements, excluding payroll only providers)	57	59%	70%
Some Liability Limitations, Less than What is Provided for Under Regulation E (for at least some reviewed agreements)	4	4%	5%
No Limited Liability Protections (for at least some reviewed agreements)	6	6%	7%
Could not Locate any Account Agreements (excluding payroll only providers)	14	15%	NA
Total Number of Directly Affected Small or Potentially Small Non-Bank Entities	96	100%	100%

Error Resolution Protections. The Bureau's market research, including the Study of Prepaid Account Agreements, strongly suggested that the majority of directly affected small or potentially small non-bank entities presently extend some form of error resolution protections to consumers. Table 3 summarizes the Study's findings regarding current industry practice with respect to error resolution and provisional credit for the 96 directly affected small or potentially small non-bank entities identified by the Bureau.

In the Study of Prepaid Account Agreements, the Bureau examined relevant language in prepaid account agreements addressing error resolution in order to assess whether each program provides by contract the same error resolution protections that Regulation E provides with respect to accounts to which it applies. For each entity for which at least one prepaid account agreement was available and that offers at least one prepaid account program that was not a payroll card account program, the Bureau classified the entity's error resolution protections as belonging to one of four categories: (1) Full error resolution with provisional credit for all consumers when the error is not resolved within a defined period of time, for all reviewed agreements; (2) error resolution with limitations on provisional credit; (3) error resolution with no mention of provisional credit; and (4) no error resolution.

[549] The Bureau repeated this analysis restricting attention to just those 13 non-bank entities that could be classified as small. Of these entities, 12 provide liability limitations consistent with Regulation E (or only offer payroll card accounts). The one remaining entity did not have an available account agreement.

The Bureau determined that approximately 58 percent (16 percent + 42 percent) of all small or potentially small non-bank entities likely to be directly affected by the proposed rule currently provide full error resolution with provisional credit for all of their reviewed programs, as reflected in Table 3.[550] Therefore, over half of non-bank entities that are small or potentially small would not need to change their error resolution or provisional credit practices if the proposed rule were adopted. Further, an additional 18 percent of entities provide error resolution protections but with provisional credit available only in limited circumstances. These non-bank entities would experience only a portion of the total increase in burden associated with the requirement that they extend provisional credit to all consumers in instances when an error is not resolved within a defined period of time. An additional eight percent of entities offer error resolution but would potentially incur the entire portion of the burden associated with extending provisional credit. Only two percent of small or potentially small non-bank entities (two entities) currently provide no error resolution protections for at least one of their prepaid programs, and thus would incur the entire burden associated with providing error resolution and provisional credit.

The final column of Table 3 reports the relative frequency of the error resolution policies for the set of directly affected small or potentially small non-bank entities for which the Bureau could locate an agreement for at least one program (or which only offer payroll card accounts). Within this group of directly affected entities, 67 percent (18 percent + 49 percent) presently provide full error resolution with provisional credit for all reviewed programs, and thus, would not need to change their policies if the proposed rule were adopted. An additional 21 percent would incur only a portion of the total burden arising from the extension of provisional credit requirements.[551]

Table 3: Current Industry Practice with Respect to Error Resolution and Provisional Credit Among Directly Affected Non-Bank Entities of Small or Potentially Small Size

Current Business Practice	Number of Directly Affected Small or Potentially Small Non-Bank Entities	Percent of All Directly Affected Small or Potentially Small Non-Bank Entities	Percent of Directly Affected Small or Potentially Small Non-Bank Entities (among the 82 that either only offer payroll card programs or have at least one available agreement)
Compliant Because Only Offers Payroll Card Accounts	15	16%	18%
Full Error Resolution with Provisional Credit (for all reviewed agreements, excluding payroll only providers)	40	42%	49%
Error Resolution with Limitations on Provisional Credit (for at least some reviewed agreements)	17	18%	21%
Error Resolution but No Provisional Credit (for at least some reviewed agreements)	8	8%	10%
No Error Resolution Coverage (for at least some reviewed agreements)	2	2%	2%
Could not Locate a Prepaid Account Agreement (excluding payroll only providers)	14	15%	NA
Total Number of Directly Affected Small or Potentially Small Non-Bank Entities	96	100%	100%

[550] Note that the percentages cited in this paragraph may not add up to 100 percent due to rounding.

[551] The Bureau repeated this analysis restricting attention to just those 13 non-bank entities that could be classified as small. The distribution of policies was as follows: 31 percent of entities presently comply with Regulation E because they only offer payroll card accounts, 46 percent provide full error resolution with provisional credit for all reviewed agreements (excluding payroll only providers), eight percent provide error resolution with limitations on provisional credit for at least some reviewed agreements, eight percent provide error resolution with no mention of provisional credit for at least some reviewed agreements, zero percent do not provide error resolution protections, and prepaid account agreements could not be located for eight percent of the small non-bank entities.

Costs Associated with Limited Liability and Error Resolution Protections. As a result of the proposed rule, those few directly affected small or potentially small non-bank entities that do not currently provide limited liability or error resolution protections to consumers would incur costs associated with offering these protections. As described in the Section 1022(b)(2) discussion above, these entities would need to establish procedures for complying with the proposed requirements, including developing the capacity to give the required disclosures to consumers, receive oral or written error claims, investigate error claims, provide consumers with investigation results in writing, respond to any consumer request for copies of the documents that the institution relied upon in making its determination, and correct any errors discovered within the required timeframes. The establishment of these policies and procedures would constitute a one-time cost for those few small or potentially small non-bank entities that do not currently offer limited liability or error resolution, and implementing these procedures and paying out claims, as well as provisional credit, would constitute an ongoing cost.[552]

Those directly affected small or potentially small non-bank entities that offer limited liability and error resolution protections to consumers but do not currently provide provisional credit, as well as those entities that provide liability protections or provisional credit in a more limited form than what would be required by the proposed rule, would also incur additional costs. Directly affected entities offering liability protections of a more limited form than is required by Regulation E would incur additional costs associated with paying out claims. In addition, directly affected entities that do not offer provisional credit (or offer it in a more limited form) would incur a small opportunity cost associated with the funds being extended as provisional credit. Additionally, in instances where the entity has extended provisional credit and subsequently determines that an alleged error was, in fact, an authorized transfer, the entity may be unable to reclaim all or part of the provisional credit previously extended, thus incurring additional costs.

The costs associated with providing these protections may vary across entities for several reasons. For instance, an entity's customer base may influence the type of errors that are likely to be reported (and therefore the costs associated with investigations) as well as the ease with which the entity is able to reclaim provisional credit that has been previously extended. The initial screening procedures employed by a prepaid account provider to determine eligibility for an account, as well as ongoing monitoring of accounts, likely affect realized loss levels. Although small entities may be at a disadvantage with respect to fraud screening relative to larger entities that may have access to more extensive information or more sophisticated screening technology, small entities are sometimes able to rely on industry partners to screen for and to investigate potential fraud.[553] Financial institutions may choose to limit fraud liability by closing accounts that have repeated error claims or by not offering accounts to individuals previously found to engage in potentially fraudulent activity.

The Bureau conducted industry outreach to attempt to determine the costs to prepaid account providers associated with implementing Regulation E compliant error resolution, including provisional credit. Estimates of the ongoing costs associated with providing error resolution with provisional credit varied. One program manager that provides limited liability and error resolution protections with provisional credit to all consumers suggested that it reserved $0.35 per active cardholder per month in fraud losses (including both losses related to Regulation E error claims as well as other types of fraud). Another program manager that also provides limited liability and error resolution with provisional credit suggested total fraud losses related to Regulation E that translate to roughly $0.22 per cardholder per month. As described in the Section 1022(b)(2) discussion, those few entities that do not presently provide limited liability or error resolution protections to consumers would additionally incur one-time implementation costs associated with the establishment or modification of practices and procedures extending these protections (in addition to increased ongoing operational costs).

Those small or potentially small non-bank entities that provide limited liability and error resolution protections to consumers but give provisional credit only in limited circumstances, or not at all, would sustain increased ongoing operational costs. The Bureau does not have information that explicitly captures the incremental cost associated with extending provisional credit for those entities that otherwise provide error resolution protections. However, estimates derived using available information suggest that the magnitude of the ongoing cost of providing these protections is roughly one-third of the total ongoing cost associated with fraud losses (including those specifically related to provisional credit).[554] To the extent that many financial institutions currently provide provisional credit (albeit in limited circumstances), the cost impact arising from this provision would be further mitigated.

2. Other Major Provisions Potentially Affecting Small Entities

The proposed rule includes new pre-acquisition disclosure requirements for prepaid accounts which are fully applicable to small entities. As described more extensively in the

[552] It is worth noting that program managers may rely on industry partners, including processors or issuing banks, to perform some or all of the functions associated with performing error resolution. The Bureau's understanding from discussion with industry participants is that processor fees can include a fixed fee per dispute as well as a variable component.

[553] One potentially small program manager told the Bureau that it receives information from its processor regarding whether a consumer had filed unsubstantiated disputes with other prepaid programs serviced by the processor.

[554] One program manager told the Bureau that when they extended provisional credit to all accounts, having previously only provided provisional credit to those accounts receiving Federal payments, their losses arising from providing provisional credit increased four to six times the previous level, and overall fraud losses increased 40 percent (including the increased losses arising from extending provisional credit). Assuming that there was no change in fraud losses not relating to provisional credit, this implies that provisional credit accounted for between seven and ten percent of the initial level of fraud losses and just over a third of the final fraud losses. This can be shown as follows. Let E=fraud losses not relating to provisional credit, P=fraud losses relating to provisional credit, and L=total fraud losses prior to the expansion of provisional credit coverage to all consumers. Therefore, it follows that L=P+E prior to the expansion of provisional credit coverage to all consumers. After the expansion of provisional credit to all consumers (and assuming no change in E), it follows that (i.) 1.4L = 5P+ E or (ii.) 1.4L = 7P+E. The percentage of initial fraud losses accounted for by provisional credit is represented by P/L. Rearranging (i.) gives P/L = 0.4/4 = 10 percent, and rearranging (ii.) gives P/L = 0.4/6 = 6.7 percent. In scenario described by (i.), a four time increase, fraud losses not relating to provisional credit (E) account for 90 percent of the total fraud losses before the increase; in the scenario described by (ii.), a six time increase, (E) accounts for 93.3 percent of the total fraud losses before the increase. Assuming that E does not change, the percentage of final fraud losses accounted for by provisional credit once extended to all accounts in scenario (i.) is 5(.10)/[5(.10)+.90] = 36 percent and 7(.067)/[7(.067)+.933] = 34 percent in scenario (ii.). If overall fraud losses, including losses associated with providing provisional credit, are assumed to be $0.35 per active cardholder per month, it follows that the cost to extend provisional credit to all consumers is roughly $0.12 per cardholder per month.

Section 1022(b)(2) discussion above, the proposed rule would require that financial institutions include a specified subset of fees as well as a product-specific set of other commonly incurred fees in a specifically described disclosure box (the ''short form'').[555] In addition to the short form disclosure, financial institutions would be required to provide a disclosure that includes a full listing of fees as well as any conditions under which the fees may change (the ''long form''). Finally, the fee disclosure provided as part of the prepaid account agreement would be required to follow most of the content and format requirements of the long form disclosure.

All financial institutions would incur one-time implementation costs associated with reviewing and revising existing disclosures to ensure that they conform to the new requirements. Certain requirements regarding how the disclosures would be made available to consumers depend on the distribution channel. For those prepaid accounts distributed in a retail environment, the short form disclosure would be required to be included on the product's packaging material, and the long form disclosure would be required to be made available both by telephone and online. Financial institutions distributing prepaid accounts online would be required to provide online access to both the long form and short form disclosures to consumers, and those institutions distributing prepaid accounts in person would be required to provide both forms in print. For transactions conducted by telephone, financial institutions would be required to provide the short form disclosure information orally, to inform consumers of the existence of the long form disclosure and its availability by telephone and on a Web site, and to provide the information in the long form disclosure to the consumer upon request.

Accordingly, the implementation costs to entities arising from the proposed disclosure requirements would vary based on which distribution channels are used by an entity and the relative intensity of the entity's reliance on each distribution channel. These channels include retail distribution, online distribution, and in-person distribution, among others. The impacts on financial institutions distributing via each of these channels are described in the Section 1022(b)(2) discussion above.

Based on industry outreach, the Bureau believes that small entities typically do not rely on the retail channel to distribute prepaid accounts or, to the extent that they do, rely on this channel in a limited way.[556] For products that are not distributed via the retail channel, providers would incur a one-time cost, believed to be minimal, to review and edit existing disclosures to ensure that they include all applicable fees and follow the specified formatting requirements and, in some cases, to print revised disclosures. Those entities distributing prepaid accounts online would incur costs, believed to be minimal, to update Web sites to include the revised disclosures.

As described in the Section 1022(b)(2) discussion, the pre-acquisition disclosure requirements also impose ongoing operational costs on covered entities separate and apart from the aforementioned implementation costs. In order to determine the composition of the short form disclosure, covered entities would need to review data on an annual basis to ascertain which fees should be included in the incidence-based part of the short form disclosure. Absent a need to revise the short form disclosure, review of the information necessary to make these determinations, which is likely maintained in the ordinary course of business, should comprise minimal ongoing cost. If disclosures need to be revised due to a change in the required elements, covered entities would incur costs associated with these revisions. For those entities distributing prepaid accounts online, this would require a Web site update, or updated link, to a revised form. Updates to written and electronic disclosures would need to occur within 90 days. The Bureau believes that the costs associated with updates to written and electronic disclosures are minimal.

Other key provisions of the proposed rule potentially triggering burden include expansions to access to account information requirements (largely extending the current periodic statement alternative for payroll card accounts to all prepaid accounts with certain modifications) and the establishment of certain additional disclosures related to access to account information. Financial institutions offering prepaid accounts would be required to comply with Regulation E's periodic statement requirement; the proposed rule also includes an alternative means of compliance with this requirement. Specifically, the proposed rule states that financial institutions are not required to furnish periodic statements to consumers if they make available to the consumer his or her account balance through a readily available telephone line, provide the consumer with access to at least 18 months of transaction history online, and if requested by the consumer, provide 18 months of written account history at no charge. Regardless of whether the financial institution chooses to provide periodic statements or implement the alternative, the proposed rule would impose the additional requirement that the financial institution disclose to the consumer a summary total of the amount of all fees assessed against the consumer's prepaid account, the total amount of deposits to the account, and the total amount of all debits made to the prepaid account for both the prior calendar month as well as the calendar year to date.

Although not all covered financial institutions are currently required to make transaction history available to consumers, current industry practice is to provide consumers with electronic access to at least 60 days of transaction history information.[557] The Bureau understands from outreach to industry that some providers currently make available more than 60 days of transaction history online, ranging from six months or one year to the entire life of the prepaid account. The proposed rule would extend this requirement to 18 months of electronic history for those financial institutions relying on the alternative means of complying with Regulation E's periodic statement requirement. Additionally, financial institutions may have to modify existing transaction history reporting or periodic statements if they do not presently include the proposed summary totals.

The nature of the costs associated with these proposed provisions would depend on the extent to which the entity relies on outside vendors to perform information technology functions. For those covered entities maintaining in-house information technology platforms, the cost associated with updating systems to maintain this information and providing additional electronic storage should be

[555] Additionally, providers of payroll card accounts and government benefit accounts would be required to include a notice at the top of the short form disclosure stating that consumers are not required to accept such a card and that alternative methods are available by which they may receive their wages or benefits.

[556] This is, in part, due to the potentially high fixed costs associated with distributing prepaid accounts through this channel.

[557] Providers of payroll card accounts complying with Regulation E by using the alternative to providing periodic statements are currently required to provide consumers with electronic access to at least 60 days of account history, and the FMS Rule requires such access to be provided for accounts that receive Federal payments.

negligible and would consist primarily of an expansion of existing electronic storage media. Those financial institutions that format their own periodic statements or transaction histories and do not currently display the required totals on their periodic statements or transaction histories would incur a one-time implementation cost to modify these disclosures.[558]

Many small entities rely on a processor to provide online hosting of consumer account history information, among other functions. The Bureau's understanding is that providers outsourcing this function pay processors a fee per prepaid account that may be a function of both the extent of the account history provided and the number of accounts that are being serviced by the processor.[559] These entities would generally rely on their processor to modify periodic statements or electronic transaction histories to display the required summary totals.[560] However, one program manager indicated to the Bureau that if such summary totals were a regulatory requirement, it predicted that the processor would offer it as part of its standard package of services at no additional cost.

As discussed in the Section 1022(b)(2) consideration of benefits and costs, the Bureau's understanding from industry outreach is that most covered financial institutions provide telephone access to balance information to consumers presently. Therefore, the Bureau regards the potential burdens associated with these provisions to be de minimis and not likely, considered separately or cumulatively, to constitute a significant economic impact.

The proposed rule also includes the requirement that prepaid account issuers submit copies of their agreements to the Bureau on a quarterly basis and post such agreements online. In addition, the proposed rule would require all prepaid account issuers to respond to consumer requests for written agreements or to post such agreements online. The Bureau believes that the costs associated with such activities should be minimal.

D. Conclusion

To determine whether the economic impact of the proposed rule could be significant, the Bureau compared estimates of the cumulative costs imposed by the proposed provisions on directly affected small or potentially small non-bank entities to an estimate of revenues earned by these entities.[561]

As discussed above, roughly two percent of the directly affected small or potentially small non-bank entities identified by the Bureau, which do not offer any form of limited liability or error resolution protections to consumers, would sustain an increase in ongoing costs, which the Bureau estimates to be $0.22 to $0.35 per active cardholder per month, as well as fixed costs associated with implementing Regulation E compliant limited liability or error resolution procedures were the proposed rule adopted. For those entities that provide limited liability and error resolution protections without provisional credit, the Bureau estimates that they would experience ongoing costs of up to one-third of the ongoing costs incurred by those entities that do not presently provide any form of limited liability or error resolution protections (or roughly $0.12 per active cardholder per month). The Bureau does not have information that would enable it to separately determine the cost associated with extending Regulation E's limited liability protections and the cost associated with providing error resolution in general.[562]

Excluding those entities without at least one prepaid account agreement, two percent of small or potentially small non-bank entities did not appear to provide any error resolution protections, and seven percent of small or potentially small non-bank entities did not appear to provide any limited liability protections in at least one reviewed prepaid account agreement.[563] The Bureau uses the observed distribution of error resolution and limited liability protections to impute likely levels of protection for those entities for which no account agreement is available.[564]

The Bureau assumes that the one directly affected small or potentially small non-bank entity offers overdraft services or other credit features in connection with prepaid accounts would experience a significant economic impact from the proposed provisions.

Since small non-bank entities typically do not distribute prepaid accounts via the retail channel (or tend to rely on that channel for a modest portion of their portfolio), the costs associated with the other provisions of the proposed rule are minimal. Further, the Bureau believes that non-compliance related economic costs, such as potential future changes in market share arising from the new disclosure requirements, are minimal for all proposed provisions aside from those concerning overdraft or other credit features offered in connection with prepaid accounts.[565]

Since both revenue information and metrics describing the number of active prepaid accounts were not generally available (at the entity level) for directly affected small or potentially small non-bank entities, the Bureau relied on findings from industry studies (which may cover programs offered by entities that are not small or potentially small) to derive an estimate of the likely fee and interchange revenue earned per cardholder per month for certain types

[558] One program manager estimated that modifying its Web site to provide such functionality would cost approximately $15,000.

[559] One program manager that relies on a processor for this function told the Bureau that fees for data storage are charged on a per account basis one time at activation. The program manager did not have an estimate of the cost associated with providing 18 months of history, but costs were generally increasing from $0.08 per account for three months of transaction history to $0.19 per account for one year of transaction history. This program manager also suggested that processor prices decrease with scale and that it was operating at low scale and was consequently paying among the highest prices charged by the processor.

[560] One program manager stated that its processor quoted a one-time cost of $65,000 associated with providing this functionality on its processor-hosted Web site (in response to an ad-hoc request). This likely represents an upper bound for the true development cost since this number likely includes a mark-up over the true cost of providing the service. Actual costs would be borne jointly by the processor and the prepaid providers relying on the processor for hosting services.

[561] The Bureau did not separately consider the costs borne by small banks and credit unions since a substantial number of such entities are not directly affected by the proposed rule, as shown above. With respect to the determination of whether the economic impact experienced by non-bank entities is significant, the current policies of such entities are considered. Revenues would be earned and costs would be borne jointly by both issuers (typically banks and credit unions) and program managers (often non-banks). In order to determine whether the economic impact is significant, revenues and costs are considered cumulatively.

[562] To the extent that the ongoing fraud loss estimates include the costs associated with providing liability limitations, the ongoing costs associated with these protections may be bounded. For instance, if the ongoing cost of providing limited liability, error resolution, and provisional credit protections is $0.35 per active cardholder per month, and provisional credit represents $0.12 of that total, then the ongoing cost associated with providing limited liability protections could be, at most, $0.23 per active cardholder per month. The Bureau conservatively assumes that absence of either limited liability protections or error resolution protections could imply a significant economic impact.

[563] One entity that does not provide limited liability protections also does not provide error resolution protections.

[564] Payroll only providers are excluded from the observed distribution when imputing the likely protections for those entities missing account agreements.

[565] In addition, such non-compliance related economic costs, including potential costs relating to disclosure, would be difficult to predict, and the Bureau does not have reason to believe that they would cause small entities to experience a significant economic impact.

of prepaid accounts.[566] Although entities offering prepaid accounts may derive revenue from many sources, including other lines of business, the Bureau conservatively assumed that small entities only derive revenues from fees paid by cardholders and interchange fees. The Bureau obtained revenue estimates $9.98 per active cardholder per month for GPR cards distributed online and $6.77 per active cardholder per month for payroll cards.[567]

Comparing these revenue estimates to the range of estimates available to the Bureau of the ongoing costs of providing limited liability and error resolution protections with provisional credit and considering additional implementation costs, the Bureau concludes that those few small or potentially small non-bank entities that provide prepaid accounts that do not provide limited liability protections or do not provide error resolution protections may likely experience a significant economic impact from the proposed rule.[568] In addition, the one small or potentially small entity that offers overdraft services in connection with its prepaid accounts may experience a significant economic impact as a result of the proposed rule. Combined, the Bureau believes that there are approximately nine directly affected small or potentially small non-bank entities likely to experience a significant economic impact as a result of the proposed rule. Thus, the Bureau believes that less than one percent of all small non-bank entities in the relevant NAICS code would experience a significant economic impact as a result of the proposed rule.[569] The Bureau also believes that less than two percent of all small non-bank entities in the relevant NAICS code that perform either electronic fund transfers or electronic payment services would experience a significant economic impact from the proposed rule.[570]

The Bureau seeks comment on the methodology for estimating burden described in this analysis and requests any relevant data, including information regarding the implementation costs and ongoing costs associated with the proposed rule, especially as they pertain to small entities. Additionally, the Bureau seeks comment regarding the revenue and cost estimates used in this analysis.

Certification

Accordingly, the undersigned certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Bureau's collection of information requirements contained in this proposal, and identified as such, will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (Paperwork Reduction Act or PRA) on or before publication of this proposal in the **Federal Register**. Notwithstanding any other provision of law, under the Paperwork Reduction Act, the Bureau may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number.

The proposed rule would amend 12 CFR part 1005, Electronic Fund Transfers (Regulation E) and 12 CFR part 1026, Truth in Lending (Regulation Z). Regulation E and Regulation Z currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation E is 3170–0014 (Electronic Fund Transfer Act (Regulation E) 12 CFR 1005). The Bureau's OMB control number for Regulation Z is 3170–0015 (Truth in Lending Act (Regulation Z) 12 CFR 1026). As described below, the proposed rule would amend the collections of information currently in Regulation E and Regulation Z subparts B and G. The frequency of response is on occasion, except for periodic statements and quarterly submissions of prepaid account agreements. These information collections are required to provide benefits for consumers and are mandatory. The only information the Bureau would collect under the proposal are the account agreements for prepaid programs, so no issue of confidentiality arises. The affected public of the proposed rule includes businesses, government agencies and other for-profit and not-for-profit organizations. The Bureau is not aware of any small not-for-profit organizations, aside from credit unions, that would be directly affected by the proposed rule.

Under the proposed rule, the Bureau generally would account for the paperwork burden associated with Regulation E and Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository financial institutions with more than $10 billion in total assets, their depository institution affiliates (together, the Bureau depository respondents), and certain non-depository financial institutions (the Bureau non-depository respondents), such as prepaid account program managers. The Bureau and the FTC generally both have enforcement authority over non-depository financial institutions under Regulation E and Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden on Bureau non-depository respondents. Other Federal agencies, including the FTC, are

[566] *See* 2012 FRB Philadelphia Study*; see also* Kansas City Fed Study.

[567] Using this approach, the Bureau obtained a revenue estimate of $9.14 per active cardholder per month for GPR cards distributed in a retail setting, but the Bureau notes that its understanding based on industry outreach is that small non-bank entities typically do not distribute prepaid accounts via this distribution channel. Estimates are obtained by combining information from Tables 5.7 and 5.8 from the 2012 FRB Philadelphia Study. For example, the revenue estimate is calculated in the following manner for those general purpose reloadable cards distributed in an online setting. First, using information in Table 5.7, the net interchange is determined by taking the difference between the interchange received and the interchange paid ($23.35-$6.41 = $16.94). Next, the ratio of total revenues (assuming that these are composed of only cardholder fees and net interchange earned) to cardholder fees is obtained (($76.00+$16.94)/$76.00 = 1.223). This inflator is then applied to cardholder fees line in Table 5.8 (1.223*$8.16 = $9.98).

[568] It is worth noting that this approach does not take into account the likely cost and revenue structure of person-to-person payment programs that may offer prepaid accounts to consumers. However, only four non-bank entities offering person-to-person payment programs were identified by the Bureau as small or potentially small. One of these entities is being considered by the Bureau's analysis to sustain a significant economic impact because it does not provide error resolution protections for consumers. Therefore, this information omission, at most, could result in failing to attribute a significant economic impact to three small or potentially small non-bank entities.

[569] The numerator in this calculation assumes that one small non-bank entity experiences a significant economic impact from the requirements relating to overdraft services and eight small non-bank entities experience a significant economic impact from the requirements relating to the imposition of Regulation E's limited liability and error resolution requirements, including provisional credit. These eight entities include one entity that does not provide error resolution protections, one entity that does not provide error resolution or limited liability protections, five entities that do not provide limited liability protections, and one additional entity that does not provide limited liability (imputed among those entities that are missing account agreements based on the distribution of protections among those entities with observed agreements).

[570] To derive this estimate, the Bureau assumes that 700 entities are within the NAICS code 522320 and perform either electronic fund transfers or electronic payment services. This is consistent with the number relied upon in FinCEN's Prepaid Access Rule. *See* 76 FR 45403 (July 29, 2011). Using a threshold of $7 million in annual receipts (the SBA threshold at the time), FinCEN estimated that 93 percent, or 651, of these entities were small. At present, the SBA considers entities within NAICS code 522320 with under $38.5 million in annual receipts to be small. Therefore, the Bureau further assumes that *at least* 651 of these entities are small. The Bureau conservatively uses a denominator of 651 to obtain this estimate.

responsible for estimating and reporting to OMB the total paperwork burden for the financial institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

For Regulation E, using the Bureau's burden estimation methodology discussed below, the estimated burden for the approximately 181 prepaid providers likely subject to the proposal, including Bureau respondents, would be one-time burden of 35,398 hours and ongoing burden of 10,376 hours. The Bureau allocates to itself 16,538 hours of one-time burden: Bureau depository respondents account for 4,450 hours while Bureau non-depository respondents account for 24,177 hours, half of which the Bureau allocates to itself and half to the FTC. The remaining one-time burden (35,398 − 4,450 − 24,177 = 6,771 hours) is allocated to the other federal agencies that have administrative enforcement authority over banks and credit unions not subject to the Bureau's administrative enforcement authority. Similarly, the Bureau allocates to itself 4,494 hours of ongoing burden: Bureau depository respondents account for 1,761 hours while Bureau non-depository respondents account for 5,466 hours, half of which the Bureau allocates to itself and half to the FTC. The remaining ongoing burden (10,376 − 1,761 − 5,466 = 3,149 hours) is allocated to the other federal agencies that have administrative enforcement authority over banks and credit unions not subject to the Bureau's administrative enforcement authority.

For Regulation Z, using the Bureau's burden estimation methodology discussed below, the estimated burden for two non-depository institutions subject to the proposal would be one-time burden of 384 hours and ongoing burden of 5,641 hours. The Bureau allocates to itself half of both these burden estimates (192 hours and 2,821 hours, respectively) and half to the FTC.

The aggregate estimates of total burdens presented in this part are based on estimated burden hours that are averages across respondents. The Bureau expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent. The Bureau used existing burden estimates as well as information obtained through industry research and outreach to develop the figures presented below.

The Bureau's PRA estimation methodology assumes that one-time burden increases with the number of programs operated by a program manager.[571] Ongoing burden may increase with the number of programs, the number of customers, or both. However, both one-time and ongoing PRA burden from the proposed rule is minimal. Most prepaid account programs already comply with the current requirements of Regulation E, as they apply to payroll card accounts. The additional proposed requirements would generally require small extensions or revisions to existing practices. Finally, there may be several participants in the prepaid account supply chain and the activities of the participants may vary across prepaid programs. The Bureau understands that, in general, the respondents for purposes of PRA are program managers, except for the collection required by § 1005.19 (internet posting of prepaid account agreements and submission to the Bureau), where the respondents will likely be prepaid account issuers.

Regulation E

As discussed further below, the Bureau proposes to require providers to make available to consumers disclosures before a consumer agrees to acquire a prepaid account. These disclosures would take two forms: a short form highlighting key fees that the Bureau believes are most important for consumers to know about prior to acquisition and a long form that would set forth all of the prepaid account's fees and the conditions under which those fees could be imposed. Second, the Bureau is proposing to extend, with certain modifications, existing error resolution and limited liability provisions for payroll card accounts and certain government benefit accounts to all prepaid accounts.[572] Third, the proposed rule would adopt provisions requiring prepaid account issuers to post agreements for prepaid accounts on the issuers' Web sites and to submit those agreements to the Bureau for posting on a publicly-available Web site established and maintained by the Bureau. Finally, the Bureau is proposing to revise Regulation E (both subparts A and B) in various places to reflect the new provisions adopted for prepaid accounts including proposed revisions to provisions currently applicable to payroll card accounts and certain government benefit accounts.

The Bureau is proposing to extend, with certain modifications, existing provisions for payroll card accounts and certain government benefit accounts to all prepaid accounts. The Bureau's Study of Prepaid Account Agreements and review of industry research found that most programs of GPR prepaid accounts currently comply with the major provisions of the payroll card requirements of Regulation E. These accounts would be affected mostly by proposed modifications to the current provisions for payroll card accounts.

The Bureau believes that providers of prepaid accounts generally provide account opening disclosures, change in terms notices, and annual error resolution notices that meet the current requirements of Regulation E. However, the Bureau is proposing to expand the account opening requirements of § 1005.7(b)(5) as applied to prepaid accounts to require the disclosure of all fees, not just fees for electronic fund transfers. The one-time and ongoing burden from this requirement should be minimal. Regulation DD already requires banks to disclose all fees for accounts covered by that regulation (Credit Unions are subject to a similar requirement). Program managers for prepaid accounts that may not constitute accounts under Regulation DD may need to adjust their account opening disclosures. The Bureau believes the one-time and ongoing cost of implementing this change would be minimal.[573]

[571] The Bureau recognizes some uncertainty regarding the rate at which the one-time burden on a program manager increases with the number of programs as well as uncertainty regarding the average number of programs per program manager. The Bureau welcomes comments on its PRA burden methodology as well as data and other factual information that could improve the Bureau's estimates of PRA burden.

[572] All prepaid cards used to distribute Federally administered benefits (such as Social Security and SSI) and State and local non-needs tested benefits (such as unemployment, child support, and pension payments) are currently covered by Regulation E. However, government agencies are currently not required to provide periodic statements or online access to account information for cards distributing State and local non-needs tested benefits, as long as balance information is made available to benefits recipients via telephone and electronic terminals and a written account history of at least 60 days is given upon request. Needs-tested EBT programs established or administered under State or local law are not currently subject to Regulation E pursuant to existing § 1005.15(a). The Bureau's proposed rule would not change this.

[573] The Bureau notes that Regulation DD requires that a periodic statement disclose all fees debited to accounts covered by that regulation. § 1030.6(a)(3). Regulation DD defines ''account'' to mean ''a deposit account at a depository institution that is held by or offered to a consumer. It includes time, demand, savings, and negotiable order of withdrawal accounts.'' § 1030.2(a). Because some prepaid accounts, as proposed herein to be defined under Regulation E, may not also constitute accounts as defined under Regulation DD, the Bureau is proposing new § 1005.18(c)(3) to ensure that periodic statements and histories of account transactions for prepaid accounts include all fees, not just those related to electronic fund transfers and account maintenance. As noted above, this proposed revision is authorized under EFTA

Continued

Providers offering certain electronic fund transfer services for prepaid accounts would also need to provide transaction disclosures. For example, a disclosure would be required for transactions conducted at an automated teller machine. These disclosures impose minimal burden as they are machine-generated and do not involve an employee of the institution. For preauthorized transfers to the consumer's account occurring at least once every 60 days, such as direct deposit, the institution would be required to provide notice as to whether the transfer occurred unless positive notice was provided by the payor. In lieu of sending a notice of deposit, the institution may provide a readily available telephone number that the consumer can call to verify receipt of the deposit. Thus, the burden of this requirement is also minimal. For preauthorized transfers from the account, either the institution or the payee would need to notify the consumer of payment variations. Because in the vast majority of instances the payee, rather than the account provider, would satisfy this obligation, the burden on providers is minimal.

The Bureau is proposing that, subject to certain exceptions provided in proposed § 1005.18(b)(1)(ii), a provider would be required to make available a short form and a long form disclosure required by § 1005.18(b)(2)(i) and (ii) before the consumer acquires the prepaid account. The Bureau estimates that providers, including Bureau respondents, would take 40 hours per prepaid account program, on average, to develop the short form disclosure and to update systems. The Bureau also recognizes a one-time cost of replacing and disposing of cards in stores of approximately $17 million.[574] Providers would take 8 hours annually per prepaid account program to evaluate and if necessary update incidence-based fees on the short form disclosure. Providers would incur no other ongoing costs for the short form disclosure since they already offer consumers a pre-acquisition disclosure. The Bureau estimates that providers, including Bureau respondents, would take on average 8 hours per prepaid account program to develop the long form disclosure and update systems. The long form disclosure is substantially the same as disclosures already provided in prepaid account agreements.[575]

Proposed § 1005.18(b)(7) would require that certain disclosures be made on the actual prepaid account access device. These include the name of the financial institution and the URL of a Web site and a telephone number that the consumer can use to contact the financial institution about the prepaid account. The Bureau believes that currently all prepaid account access devices provide these disclosures.

The Bureau's proposal would require providers offering prepaid accounts to provide periodic statements unless they use the alternative method of compliance in proposed § 1005.18(c)(1). The Bureau expects that most providers would use the alternative method of compliance. The Bureau's Study of Prepaid Account Agreements and its industry research found that most programs provide electronic access to account information. However, few provide at least 18 months of prepaid account transaction history. Further, the Bureau currently understands that prepaid programs generally do not provide a summary total of all fees posted to the consumer's prepaid account, the total amount of all deposits to the account, and the total amount of all debits to the account for the prior calendar month and for the calendar year to date. The Bureau estimates that providers would take on average 24 hours per prepaid account program to implement these changes.

The Bureau is proposing to extend to all prepaid accounts the limited liability and error resolution provisions of Regulation E, as they apply to payroll card accounts.[576] As discussed above, the Bureau's Study of Prepaid Account Agreements and its industry research found that most providers of prepaid accounts provide limited liability and error resolution protections (including provisional credit) generally consistent with the Regulation E requirements for payroll card accounts. The Bureau estimates that providers (including Bureau respondents) that do not fully comply with the payroll card rule's limited liability and error resolution provisions would require 8 hours per non-compliant program to develop fully compliant limited liability and error resolution procedures. Regarding ongoing costs, Bureau outreach indicates that providers receive perhaps one call per month per customer who actively uses a card and that 95 percent of those calls are resolved without requiring time from a customer service agent. Of the remaining five percent, very few calls involve assertions of error, but escalated calls are time consuming and respondents incur an ongoing burden.

Finally, the Bureau is proposing in § 1005.19(b) to require certain issuers to send the Bureau copies of the account agreements for their prepaid account programs. The Bureau estimates each issuer would take on average 40 hours one-time to upload agreements and then 8 hours each quarter on an ongoing basis.

The estimated burden on Bureau respondents from the proposed changes to Regulation E are summarized below.

section 904(c) and section 1032(a) of the Dodd-Frank Act. The Bureau solicits comment on this portion of the proposal.

[574] For a period of 12 months after the final rule is published in the **Federal Register**, financial institutions would be permitted to continue selling prepaid accounts that do not comply with the final rule's pre-acquisition disclosure requirements, if the account and its packaging material were printed prior to the proposed effective date. Based on discussions with industry, the Bureau understands that after 12 months approximately 40 percent of stock would remain in stores and would have to be located, shipped, and destroyed.

[575] Proposed § 1005.18(b)(2)(ii)(B) would require that the long form disclosure include the disclosures described in § 1026.60, regarding credit card applications and solicitations, if at any point a credit plan may be offered in connection with the prepaid account. This burden would be minimal give the Bureau's burden estimation methodology for Regulation Z, as explained below. Under proposed § 1005.18(b)(6), if a person principally uses a foreign language on a package in a retail store, on the telephone or on the Web site the consumer utilizes to acquire a prepaid account, then both the short form and long form disclosures would need to be provided in that foreign language. Discussions with industry indicate that providers generally adopt this practice. The long form disclosure would also need to be provided in English, but this would be a minimal one-time and ongoing expense.

[576] The Bureau is proposing an exception from these requirements for prepaid accounts (other than payroll card accounts and government benefit accounts) for which the financial institution has not completed its collection of consumer identifying information and identity verification, provided the financial institution has disclosed to the consumer the risks of not registering the prepaid account.

Table 1								
		One-time burden (Bureau respondents)					One-time burden (Bureau amount)	
		Number of Respondents	Average burden per program (hours)	Average programs per respondent	Average Burden per Respondent (hours)	Total One-time Burden (hours)	Half the burden on Bureau non-DIs (hours)	One-Time Bureau burden (hours)
1005.18(b)(2)(i)	Short form disclosure	160	40	2.30	91.98	14,716.46	6,530.43	8,186.03
1005.18(b)(2)(ii)	Long form disclosure	160	8	2.30	18.40	2,943.29	1,306.09	1,637.21
1005.18(c)	Access to prepaid account information	160	24	2.30	55.19	8,829.88	3,918.26	4,911.62
1005.18(e)(2), 1005.11	Error resolution	20	8	1.86	14.86	297.14	133.71	163.43
1005.19(b)	Quarterly submission of agreements	46	12	3.26	40.00	1,840.00	200.00	1,640.00
Total	**Total**					**28,627**		**16,538**

Table 2							
		Ongoing burden (all Bureau respondents)				Ongoing burden (Bureau amount)	
		Number of Respondents	Annual Responses per Respondent	Average Burden per Response (minutes)	Total Ongoing Burden (hours)	Half the burden on Bureau non-Dis (hours)	Ongoing Bureau burden (hours)
1005.18(b)(2)(i)	Short form disclosure	160	2	480	2,946	1,309	1,637
1005.18(e)(2), 1005.11	Error resolution	20	281	30	2,810	1,264	1,545
1005.19(b)	Quarterly submission of agreements	46	4	480	1,472	160	1,312
Total					**7,227**	**2,733**	**4,494**

Regulation Z

For the proposed requirements under Regulation Z, the Bureau understands that approximately 205,000 consumers currently have a form of overdraft protection on their GPR and payroll cards.[577] The Bureau's PRA estimation methodology assumes that the same number would use a credit feature if the proposed rule were finalized.[578] Further, the methodology generally assumes that the per-respondent and per-transaction burdens would be consistent with those currently reported for credit card accounts in Regulation Z.

As described in greater detail above, under the proposed rule, if adopted, the Bureau anticipates that most overdraft services and credit features offered in connection with a prepaid account, including where extensions of credit are only permitted to be deposited into particular prepaid accounts specified by the creditor, would meet the definition of ''open-end credit.'' [579] In addition, under the proposal, a prepaid account that accesses such an overdraft service or credit plan generally would be a ''credit card'' under Regulation Z. Under the proposal, the overdraft services or other credit card plans described above would be governed by subparts A, B, D and G of Regulation Z.[580] Pursuant to Regulation Z, persons offering such plans would be required to comply with the requirements governing information collections. These requirements are as follows.

Persons offering an overdraft service or other credit feature in connection with a prepaid account would be required to inform consumers of costs and terms before they use the plan and in general to inform them of certain subsequent changes in the terms of the plan. Initial information would need to include the finance charge and other charges, the annual percentage rate (APR), a description of how balances on which a finance charge is based would be calculated, and any collateral that would secure repayment. If the card issuer changed any term initially disclosed, or increased the minimum periodic payment, a written change-in-term notice generally would need to be provided to the consumer at least fifteen days prior to the effective date of the change. Consistent with estimates currently reported for credit card accounts in Regulation Z, the Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account. The Bureau also assumes that for these accounts, the number of account opening disclosures equals the number of accounts in any year.[581]

[577] The Bureau is aware of two providers of overdraft services or credit features on prepaid accounts and believes that NetSpend is the only significant provider. NetSpend is an operating segment of TSYS, Inc., for which the 10–Q report for the quarter ending June 20, 2014 states that NetSpend has approximately 3.4 million active cards; *See Total Sys. Serv. Inc., Form 10–Q, available at http://www.sec.gov/Archives/edgar/data/721683/000119312514300851/d737574d10q.htm.* In a recent news article, NetSpend reported that only about six percent of its customers regularly use overdraft. *See* Suzanne Kapner, *Prepaid Plastic is Creeping Into Credit,* Wall Street J. (Sept. 5, 2012), *http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602.* Assuming each NetSpend customer has overdraft protection on only one account, there are 204,000 prepaid accounts with overdraft protection. No data is available for the second provider, Insight Card Services. The Bureau believes, based on industry data, that the median provider of prepaid accounts likely has about 10,000 customers. Assuming 10% have an overdraft service or credit feature on one prepaid account gives an additional 1,000 accounts with overdraft protection.

[578] Current data on the size of the market for credit features on prepaid accounts has limited usefulness in predicting the size of the market if the proposal is finalized, since both eligibility criteria and credit features may change as a result. *See* the previous discussions in this preamble.

[579] This would apply if the creditor establishes a program where the creditor routinely extends credit and may impose finance charges from time to time on an outstanding unpaid balance for credit.

[580] Transactions that are authorized on a prepaid account when the consumer has insufficient or unavailable funds at the time of authorization as well as transactions that are paid from a prepaid account when the consumer has insufficient or unavailable funds at the time of payment would generally be considered to be credit under Regulation Z. However, under the proposal, Regulation Z would not apply to overdraft services or other credit plans that are accessed by a prepaid card if the prepaid card only accesses credit that is not subject to any fee and is not payable by written agreement in more than four installments.

[581] In one recent analysis, the median life span for GPR cards with occasional reloads was 330 days and 570 days for GPR cards with periodic non-government direct deposit. *See* Fumiko Hayashi and Emily Cuddy, *General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees, and Fraud*

Continued

Card issuers would be required to provide a written statement of activity for each billing cycle. The statement would have to be provided for each account that has a balance of more than $1 or on which a finance charge is imposed, and it would have to include a description of activity on the account, opening and closing balances, finance charges imposed, and payment information. Consistent with estimates currently reported for credit card accounts in Regulation Z, the Bureau estimates 80 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account.

Card issuers would be required to notify consumers about their rights and responsibilities regarding billing problems. Card issuers would have to provide either a complete statement of billing rights each year or a summary on each periodic statement. If a consumer alleged a billing error, the card issuer would need to provide an acknowledgment, within thirty days of receipt, that the card issuer received the consumer's error notice and would need to report on the results of its investigation within ninety days. If a billing error did not occur, the card issuer would need to provide an explanation as to why the card issuer believed an error did not occur and provide documentary evidence to the consumer upon request. The card issuer would also have to give notice of the portion of the disputed amount and related finance or other charges that the consumer still owed and notice of when payment was due. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account. The Bureau further assumes, based on discussions with industry, that in any year 1.5 percent of customers will assert errors that require significant time from customer service representatives.

Persons offering an overdraft service or other credit feature in connection with a prepaid account would be required, when advertising their product, to include certain basic credit information if the advertisement refers to specified credit terms or costs. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and small ongoing burden to maintain or revise these disclosures.

Persons offering an overdraft service or other credit feature in connection with a prepaid account would be required to send the Bureau copies of the overdraft service or program agreement. The Bureau estimates each issuer would take on average 40 hours one-time to upload agreements and then 8 hours each quarter on an ongoing basis.

Finally, persons offering a credit feature in connection with a prepaid account would also need to provide additional disclosures with solicitations and applications. Such persons would need to disclose key terms of the account, such as the APR, information about variable rates, and fees such as annual fees, minimum finance charges, and transaction fees for purchases. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and small ongoing burden to maintain or revise these disclosures.[582]

The estimated burden on Bureau respondents from the proposed changes to Regulation Z are summarized below.

Table 3

		One-time burden			
		Number of Respondents	Average Burden per Respondent (hours)	Total One-time Burden (hours)	Bureau Amount
1026.6(b)	Account opening disclosures	2	8	16.00	8.00
1026.7(b)	Periodic statements	2	80	160.00	80.00
1026.9	Change in terms	2	8	16.00	8.00
1026.13	Error resolution	2	8	16.00	8.00
1026.16	Advertising	2	40	80.00	40.00
1026.58	Internet posting of credit card agreements	2	40	80.00	40.00
1026.60(a)(2)	Application and solicitation disclosures	2	8	16.00	8.00
Total				**384**	**192.00**

Table 4

		Ongoing burden				
		Number of Respondents	Annual Responses per Respondent	Average Burden per Response (minutes)	Total Ongoing Burden (hours)	Bureau Amount
1026.6(b)	Account opening disclosures	2	102,500	0.25	854.17	427.08
1026.7(b)	Periodic statements	2	1,230,000	0.0625	2,562.50	1281.25
1026.9	Change in terms	2	102,500	0.125	427.08	213.54
1026.13	Error resolution	2	1,538	30	1,537.50	768.75
1026.16	Advertising	2	5	25	4.17	2.08
1026.58	Internet posting of credit card agreements	2	4	480	64.00	32.00
1026.60(a)(2)	Application and solicitation disclosures	2	12	480	192.00	96.00
Total					**5,641**	**2,821**

Risks, Federal Reserve Bank of Kansas City, February 2014, at 47.

[582] The recordkeeping requirement in § 1026.25 does not specify the kind of records that must be retained, so for purposes of PRA the paperwork burden is minimal.

Comments regarding the burden estimate, or any other aspect of these collections of information, including suggestions for reducing the burden, should be sent to: The Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the Internet to *submissions@omb.eop.gov*. If you wish to share your comments with the Bureau, please send a copy of these comments to the docket for this proposed rule at *www.regulations.gov*. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available both at *www.regulations.gov* as well as OMB's public-facing docket at *www.reginfo.gov.*

List of Subjects

12 CFR part 1005

Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

12 CFR part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend 12 CFR parts 1005 and 1026, as follows:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 1005 is amended to read as follows:

Authority: 12 U.S.C. 5512, 5532, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o–1.

Subpart A—General

■ 2. Section 1005.2 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1005.2 Definitions.

* * * * *

(b) (1) * * *

(2) The term does not include an account held by a financial institution under a bona fide trust agreement.

(3) The term includes a ''prepaid account.''

(i) A prepaid account is a card, code, or other device, not otherwise an account under paragraph (b)(1) of this section, which is established primarily for personal, family, or household purposes, and which:

(A) is either issued on a prepaid basis to a consumer in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter;

(B) is redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at automated teller machines, or usable for person-to-person transfers; and

(C) is not: (*1*) A gift certificate as defined in § 1005.20(a)(1) and (b);

(*2*) a store gift card as defined in § 1005.20(a)(2) and (b);

(*3*) a loyalty, award, or promotional gift card as defined in § 1005.20(a)(4) and (b); or

(*4*) a general-use prepaid card as defined in § 1005.20(a)(3) and (b) that is both marketed and labeled as a gift card or gift certificate.

(ii) The term ''prepaid account'' includes a ''payroll card account,'' which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.

(iii) The term ''prepaid account'' includes a ''government benefit account,'' as defined in § 1005.15(a)(2).

(iv) The term ''prepaid account'' does not include a health savings account, flexible spending account, medical savings account, or a health reimbursement arrangement.

* * * * *

■ 3. Section 1005.10 is amended by revising paragraph (e)(1) to read as follows:

§ 1005.10 Preauthorized transfers.

* * * * *

(e) *Compulsory use*—(1) *Credit.* No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account. This exception does not apply to a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z (12 CFR part 1026), or is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

* * * * *

■ 4. Section 1005.12 is amended by revising paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), and (a)(2)(i) to read as follows:

§ 1005.12 Relation to other laws.

(a) * * *

(1) * * *

(ii) The issuance of an access device (other than an access device for a prepaid account) that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 1005.17(a) of this part;

(iii) The addition of an overdraft service, as defined in § 1005.17(a), to an accepted access device (other than an access device for a prepaid account); and

(iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving:

(A) With respect to an account other than a prepaid account, an extension of credit that is incident to an electronic fund transfer that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 1005.17(a); and

(B) With respect to a prepaid account, an extension of credit under a credit plan that is subject to Regulation Z subpart B that is incident to an electronic fund transfer when the consumer's prepaid account is overdrawn.

(2) * * *

(i) The addition of a credit feature or plan to an accepted access device, including an access device for a prepaid account, that would make the access device into a credit card under Regulation Z (12 CFR part 1026); and

* * * * *

■ 5. Section 1005.15 is revised to read as follows:

§ 1005.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the Act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of

government benefits from an account, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The agency shall comply with all applicable requirements of the Act and this part except as modified by this section.

(2) For purposes of this section, the term ''account'' or ''government benefit account'' means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Pre-acquisition disclosure requirements.* (1) Before a consumer acquires a government benefit account, a government agency shall comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in § 1005.18(b), in accordance with the timing requirements of § 1005.18(h).

(2) As part of its short form pre-acquisition disclosures, the agency must provide a statement that the consumer does not have to accept the government benefit account and that the consumer can ask about other ways to get their benefit payments from the agency instead of receiving them through the account, in a form substantially similar to Model Form A–10(a) in appendix A of this part.

(d) *Access to account information*—(1) *Periodic statement alternative.* A government agency need not furnish periodic statements required by § 1005.9(b) if the agency makes available to the consumer:

(i) The consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer);

(ii) An electronic history of the consumer's account transactions, such as through a Web site, that covers at least 18 months preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 18 months preceding the date the agency receives the consumer's request.

(2) *Additional access to account information requirements.* For government benefit accounts, a government agency shall comply with the account information requirements applicable to prepaid accounts as set forth in § 1005.18(c)(2) through (4).

(e) *Modified disclosure requirements.* A government agency that provides information under paragraph (d)(1) of this section shall comply with the following:

(1) *Initial disclosures.* The agency shall modify the disclosures under § 1005.7(b) by disclosing:

(i) *Access to account information.* A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of a Web site, and a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by § 1005.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph (e)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph (a) of appendix A–5 of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A–5 of this part, in place of the notice required by § 1005.7(b)(10).

(2) *Annual error resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A–5 of this part, in place of the notice required by § 1005.8(b). Alternatively, the agency may include on or with each electronic or written history provided in accordance with paragraph (d)(1) of this section, a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph (b) in appendix A–3 of this part, modified as necessary to reflect the error resolution provisions set forth in this section.

(3) *Modified limitations on liability requirements.* (i) For purposes of § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer's account under paragraph (d)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the unauthorized transfer; or

(B) The date the agency sends a written history of the consumer's account transactions requested by the consumer under paragraph (d)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) An agency may comply with paragraph (e)(3)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(4) *Modified error resolution requirements.* (i) The agency shall comply with the requirements of § 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of:

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (d)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the agency sends a written history of the consumer's account transactions requested by the consumer under paragraph (d)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (e)(4)(i) of this section, an agency complies with the requirements for resolving errors in § 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the agency within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

(f) *Initial disclosure of fees and other key information.* For government benefit accounts, a government agency shall comply with the initial disclosure requirement for fees and other key information applicable to prepaid accounts as set forth in § 1005.18(f) in accordance with the timing requirements of § 1005.18(h).

(g) *Credit card plans linked to government benefit accounts.* For credit plans linked to government benefit accounts, a government agency shall comply with prohibitions and requirements applicable to prepaid accounts as set forth in § 1005.18(g).

■ 6. Section 1005.17 is amended by revising paragraph (a)(1) to read as follows:

§ 1005.17 Requirements for overdraft services.

(a) * * *

(1) A line of credit or credit plan subject to Regulation Z (12 CFR part 1026), including transfers from a credit card account, home equity line of credit, overdraft line of credit, or a credit plan that is accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z;

* * * * *

■ 7. Section 1005.18 is revised to read as follows:

§ 1005.18 Requirements for financial institutions offering prepaid accounts.

(a) *Coverage.* A financial institution shall comply with all applicable requirements of the Act and this part with respect to prepaid accounts except as modified by this section. For rules governing government benefit accounts, see § 1005.15.

(b) *Pre-acquisition disclosure requirements*—(1) *Timing of disclosures*—(i) *General.* Except as provided in paragraphs (b)(1)(ii) or (iii) of this section, a financial institution shall provide the disclosures required by paragraphs (b)(2)(i) and (ii) of this section before a consumer acquires a prepaid account.

(ii) *Disclosures for prepaid accounts acquired in retail stores.* A financial institution must provide a written form of the disclosures required by paragraph (b)(2)(i) of this section before a consumer acquires a prepaid account in person in a retail store. A financial institution may provide the disclosures required by paragraph (b)(2)(ii) of this section after a consumer acquires a prepaid account in person in a retail store if the following conditions are met:

(A) The prepaid account access device is inside of packaging material.

(B) The disclosures required by paragraph (b)(2)(i) of this section are provided on or are visible through an outward-facing, external surface of a prepaid account access device's packaging material in the tabular format described in paragraph (b)(3)(iii) of this section.

(C) The disclosure required by paragraph (b)(2)(i) of this section includes the information set forth in paragraph (b)(2)(i)(B)(*11*) of this section that allows a consumer to access the information required to be disclosed by paragraph (b)(2)(ii) of this section by telephone and via a Web site.

(iii) *Disclosures for prepaid accounts acquired orally by telephone.* Before a consumer acquires a prepaid account orally by telephone, a financial institution must disclose orally the information required by paragraph (b)(2)(i) of this section. A financial institution may provide the disclosures required by paragraph (b)(2)(ii) of this section after a consumer acquires a prepaid account orally by telephone if the financial institution communicates to a consumer orally, before a consumer acquires the prepaid account, that the information required to be disclosed by paragraph (b)(2)(ii) of this section is available both by telephone and on a Web site.

(2) *Content of disclosures*—(i) *Short form content requirements.* In accordance with paragraph (b)(1) of this section, a financial institution shall provide a disclosure setting forth only the following fees, information and notices, as applicable:

(A) *Payroll card account notices.* When offering a payroll card account, a statement that a consumer does not have to accept the payroll card account and that a consumer can ask about other ways to get wages or salary from the employer instead of receiving them via the payroll card account, in a form substantially similar to Model Form A–10(b) in appendix A of this part. For requirements regarding what notice to give a consumer when offering a government benefit account, see § 1005.15(c)(2).

(B) *Fees and other information*—(*1*) *Periodic fee.* A periodic fee charged for holding a prepaid account, assessed on a monthly or other periodic basis, using the term ''Monthly fee,'' ''Annual fee,'' or a substantially similar term.

(*2*) *Per purchase fees.* Two fees for making a purchase using a prepaid account, both when a consumer uses a personal identification number and when a consumer provides a signature, including at point-of-sale terminals, by telephone, on a Web site, or by any other means, using the term ''Per purchase'' or a substantially similar term, and ''with PIN'' or ''with sig.,'' or substantially similar terms.

(*3*) *ATM withdrawal fees.* Two fees for using an automated teller machine to initiate a withdrawal of cash in the United States from a prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution, using the term ''ATM withdrawal'' or a substantially similar term, and ''in-network'' or ''out-of-network,'' or substantially similar terms.

(*4*) *Cash reload fee.* A fee for loading cash into a prepaid account using the term ''Cash reload'' or a substantially similar term.

(*5*) *ATM balance inquiry fees.* Two fees for using an automated teller machine to check the balance of a consumer's prepaid account in the United States, both within and outside of the financial institution's network or a network affiliated with the financial institution, using the term ''ATM balance inquiry'' or a substantially similar term, and ''in-network'' or ''out-of-network,'' or substantially similar terms.

(*6*) *Customer service fee.* A fee for calling the financial institution or its service provider, including an interactive voice response system, about a consumer's prepaid account, using the term ''Customer service,'' or a substantially similar term.

(*7*) *Inactivity fee.* A fee for non-use, dormancy, or inactivity on a prepaid account, using the term ''Inactivity'' or a substantially similar term, as well as the duration of inactivity that triggers a financial institution to impose such an inactivity fee.

(*8*) *Incidence-based fee disclosures*—(I) *Generally.* Except as provided in paragraph (b)(2)(i)(B)(*8*)(II) or (III) of this section, up to three fees, other than any of those fees disclosed pursuant to paragraphs (b)(2)(i)(B)(*1*) through (*7*) of this section, that were incurred most frequently in the prior 12-month period by consumers of that particular prepaid account product. At the same time each year, in accordance with the timing requirements of paragraph (h) of this section, a financial institution must assess whether the incidence-based fees disclosed pursuant to this paragraph were the most frequently incurred fees in the prior 12-month period and, if necessary, within 90 days, revise the incidence-based fees on disclosures provided in written, electronic, or oral form pursuant to paragraph (b)(1)(i) of this section. Disclosures provided on the packaging material of prepaid account access devices, for example, in retail stores pursuant to paragraph (b)(1)(ii) of this section, or in other locations, must be revised when the financial institution is printing new packaging material for its prepaid account access devices, in accordance with the timing requirements of paragraph (h) of this section. All disclosures provided pursuant to this paragraph and created after a financial institution makes an incidence-based fee assessment and determines changes are necessary must include such changes, in accordance with the timing requirements of paragraph (h) of this section.

(II) *New prepaid account products.* If a particular prepaid account product was not offered by the financial institution during the prior 12-month period, the financial institution must disclose up to three fees, other than any

of those fees disclosed pursuant to paragraphs (b)(2)(i)(B)(*1*) through *(7*) of this section, that it reasonably anticipates will be incurred by consumers most frequently during the next 12-month period. The incidence-based fee disclosures for newly-created prepaid account products must be included on all disclosures created for the prepaid account product, whether the disclosure is written, electronic, or on the packaging material of a prepaid account product sold in a retail store, in accordance with the timing requirements of paragraph (h) of this section.

(III) *Revised prepaid account products.* If the financial institution changes an existing prepaid account product's fee schedule at any point after assessing its incidence-based fee disclosure for the prior 12-month period pursuant to paragraph (b)(2)(i)(B)(*8*)(I) of this section, it must determine whether, after making such changes, it reasonably anticipates that the existing incidence-based fee disclosure will represent the most commonly incurred fees for the remainder of the 12-month period. If the financial institution reasonably anticipates that the current incidence-based fee disclosure will not represent the most commonly incurred fees for the remainder of the current 12-month period, it must update the incidence-based fee disclosure within 90 days for disclosures provided in written or electronic form, in accordance with the timing requirements of paragraph (h) of this section. Disclosures provided on a prepaid account product's packaging material, for example, in retail stores pursuant to paragraph (b)(1)(ii) of this section, or in other locations, must be revised when the financial institution is printing new packaging material for its prepaid accounts, in accordance with the timing requirements of paragraph (h) of this section. All disclosures provided pursuant to this paragraph and created after a financial institution makes an incidence-based fee assessment and determines changes are necessary must include such changes, in accordance with the timing requirements of paragraph (h) of this section.

(*9*) *Overdraft services and other credit features.* A statement that credit-related fees may apply, in a form substantially similar to the clause set forth in Model Form A–10(c) in appendix A of this part, if, at any point, a credit plan that would be a credit card account under Regulation Z, 12 CFR part 1026 may be offered in connection with the prepaid account. Such a credit plan could be accessed by a credit card under Regulation Z, 12 CFR 1026.2(a)(15)(i), that also is an access device that accesses the prepaid account, or a credit plan could be accessed by an account number that is a credit card under Regulation Z, where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor offering the plan. If neither of these two types of credit plans will be offered in connection with the prepaid account at any point, a statement that no overdraft or credit-related fees will be charged, in a form substantially similar to the clause set forth in the Model Form A–10(d) in appendix A) of this part.

(*10*) *Statement regarding other fees.* A statement regarding the number of fees, other than those listed on the short form pursuant to paragraphs (b)(2)(i)(B)(*1*) through (*8*) of this section, listed in the long form pursuant to paragraph 18(b)(2)(ii)(A) of this section that could be imposed upon a consumer, in a form substantially similar to the clause set forth in Model Forms A–10(a) through (d) in appendix A of this part.

(*11*) *Telephone number and Web site.* A telephone number and the unique URL of a Web site that a consumer may use to access the disclosure required under paragraph (b)(2)(ii) of this section, in a form substantially similar to the clauses set forth in Model Forms A–10(c) and (d) in appendix A of this part. This disclosure is required only when a financial institution chooses not to provide a written form of the disclosures required by paragraph (b)(2)(ii) of this section before a consumer acquires a prepaid account, as described in paragraph (b)(1)(ii) of this section.

(*12*) *Statement regarding registration.* A statement that communicates to a consumer that a prepaid account must register with a financial institution or service provider in order for the funds loaded into the account to be protected, in a form substantially similar to the clauses set forth in Model Forms A–10(a) through (d) in appendix A of this part.

(*13*) *Statement regarding FDIC (or NCUSIF) insurance.* If a prepaid account product is not set up to be eligible for FDIC deposit or NCUSIF share insurance, a statement that FDIC deposit insurance or NCUSIF share insurance, as appropriate, does not protect funds loaded into the prepaid account, in a form substantially similar to the clause set forth in Model Forms A–10(c) and (d) in appendix A of this part.

(*14*) *CFPB Web site.* The URL of the Web site of the Consumer Financial Protection Bureau, in a form substantially similar to the clause set forth in Model Forms A–10(a) through (d) in appendix A of this part.

(C) *Disclosing variable fees.* If the amount of the fee that a financial institution imposes for each of the fee types disclosed pursuant to paragraphs (b)(2)(i)(B) of this section could vary, a financial institution must disclose the highest fee it could impose on a consumer for utilizing the service associated with the fee, along with a symbol, such as an asterisk, to indicate that a lower fee might apply, and text explaining that the fee could be lower, in a form substantially similar to the clause set forth in Model Forms A–10(a) through (d) in appendix A of this part. A financial institution must use the same symbol and text for all fees that could be lower, but may use any other part of the prepaid account product's packaging material or its Web site to provide more detail about how a specific fee type may be lower. A financial institution must not disclose any additional third party fees imposed in connection with any of the fees disclosed pursuant to paragraphs (b)(2)(i)(B)(*1*) through (*8*) of this section.

(ii) *Long form content requirements.* In accordance with paragraph (b)(1) of this section, a financial institution shall provide the following disclosures:

(A) *Fees.* All fees that may be imposed by the financial institution in connection with a prepaid account. For each fee type, the financial institution must disclose the amount of the fee, the conditions, if any, under which the fee may be imposed, waived, or reduced, including, to the extent known, any third party fee amounts that may apply. If such third party fees may apply but the amount of those fees are not known, a financial institution must instead include a statement indicating that third party fees may apply without specifying the fee amount. A financial institution may not utilize any symbols, such as asterisks, to explain conditions under which any fee may be imposed. A fee imposed by a third party who acts as an agent of the financial institution for purposes of the prepaid account must always be disclosed.

(B) *Overdraft services and other credit features.* The disclosures described in Regulation Z,12 CFR 1026.60(a), (b), and (c), if, at any point, a credit plan that would be a credit card account under Regulation Z, 12 CFR part 1026, may be offered in connection with the prepaid account. Such a credit plan could be accessed by a credit card under Regulation Z, 12 CFR 1026.2(a)(15), that also is an access device that accesses the prepaid account, or a credit plan could be accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into

particular prepaid accounts specified by the creditor offering the plan.

(C) *Telephone number, Web site and mailing address.* The telephone number, Web site, and mailing address of the person or office that a consumer may contact to learn about the terms and conditions of the prepaid account, to obtain prepaid account balance information, to request a copy of transaction history pursuant to paragraph (c)(1)(iii) of this section if the financial institution does not provide periodic statements pursuant to § 1005.9(b), or to notify the person or office when a consumer believes that an unauthorized electronic fund transfer occurred as required by § 1005.7(b)(2) and paragraph (d)(1)(ii) of this section.

(D) *Statement regarding FDIC (or NCUSIF) insurance.* The disclosure required under paragraph (b)(2)(i)(B)(*13*) of this section.

(E) *CFPB Web site and telephone number.* The URL of the Web site of the Consumer Financial Protection Bureau, and a telephone number a consumer can contact and the URL a consumer can visit to submit a complaint related to a prepaid account.

(3) *Form of pre-acquisition disclosures*—(i) *General*—(A) *Written disclosures.* Except as provided in paragraphs (b)(3)(i)(B) and (C) of this section, disclosures required by paragraphs (b)(2)(i) and (ii) of this section must be in writing.

(B) *Electronic disclosures.* Disclosures required by paragraphs (b)(2)(i) and (ii) of this section must be provided in electronic form when a consumer acquires a prepaid account through the Internet, including via a mobile application. Disclosures required by paragraphs (b)(2)(i) and (ii) must be provided electronically in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. These electronic disclosures need not meet the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Disclosures provided to a consumer through a Web site where required by paragraph (b)(1)(ii)(C) and as described in paragraph (b)(2)(i)(B)(*11*) of this section must be made in an electronic form using a machine-readable text format that is accessible via both Web browsers and screen readers.

(C) *Oral disclosures.* Disclosures required by paragraph (b)(2)(i) of this section must be provided orally when a consumer acquires a prepaid account orally by telephone as described in paragraph (b)(2)(iii) of this section. Disclosures provided to a consumer through the telephone number described in paragraph (b)(2)(i)(B)(*11*) of this section also must be made orally.

(ii) *Retainable form.* Except for disclosures provided to a consumer through the telephone number described in paragraph (b)(2)(i)(B)(*11*) of this section or disclosures provided orally pursuant to paragraph (b)(1)(iii) of this section, disclosures required by paragraphs (b)(2)(i) and (ii) of this section must be made in a retainable form.

(iii) *Tabular format*—(A) *General.* Except as provided in paragraph (b)(3)(iii)(B) of this section, disclosures required by paragraph (b)(2)(i)(B) of this section that are provided in writing or electronically shall be in the form of a table substantially similar to Model Forms A–10(a) through (d) in appendix A of this part, as applicable. Disclosures required by paragraph (b)(2)(ii) of this section that are provided in writing or electronically shall be in a form of a table substantially similar to Sample Form A–10(e) in appendix A of this part.

(B) *Disclosures for prepaid account products offering multiple service plans*—(*1*) *Short form.* When a financial institution offers multiple service plans for a particular prepaid account product and each plan has a different fee schedule, the information required by paragraphs (b)(2)(i)(B)(*1*) through (*7*) of this section may be provided for each service plan together in one table, in a form substantially similar to Model Form A–10(f) in appendix A of this part, and must include descriptions of each service plan included in the table, using the terms, ''Pay-as-you-go plan,'' ''Monthly plan,'' ''Annual plan,'' or substantially similar terms. When disclosing multiple service plans on one short form, the information required by paragraph (b)(2)(i)(B)(*8*) of this section must only be disclosed once in the table. Alternatively, a financial institution may disclose the information required by paragraph (b)(2)(i)(B)(*1*) through (*8*) of this section for only the service plan in which a consumer is enrolled automatically by default upon acquiring the prepaid account, in the form of a table substantially similar to Model Forms A–10(c) or (d) in appendix A of this part. Regardless of whether a financial institution discloses fee information for all service plans on one form or chooses only to disclose the service plan in which a consumer is enrolled by default, the disclosures required by paragraphs (b)(2)(i)(B)(*9*) through (*14*) of this section must be disclosed only once.

(*2*) *Long form.* The information required by paragraph (b)(2)(ii) of this section must be presented for all service plans in the form of a table substantially similar to the Sample Form in appendix A–10(g) of this part.

(4) *Specific formatting requirements*—(i) *Grouping*—(A) *Short form disclosures.* The information required by paragraph (b)(2)(i)(A) of this section or by § 1005.15(c)(2), when applicable, must be grouped together. The information required by paragraphs (b)(2)(i)(B)(*1*) through (*4*) of this section must be generally grouped together and in the order they appear in the form of Model Forms A–10(a) through (d) in appendix A of this part. The information required by paragraphs (b)(2)(i)(B)(*5*) through (*9*) of this section must be generally grouped together and in the order they appear in the form of Model Forms A–10(a) through (d) in appendix A of this part. The textual information required by paragraphs (b)(2)(i)(B)(*10*) through (*14*) of this section must be generally grouped together and in the order they appear in Model Forms A–10(a) through (d) in appendix A of this part. The URL of the Web site disclosed pursuant to paragraph (b)(2)(i)(B)(*11*) of this section must not exceed twenty-two characters, and must be meaningfully named.

(B) *Long form disclosures.* The information required by paragraph (b)(2)(ii)(A) of this section must be generally grouped together and organized by categories of function for which a consumer would utilize the service associated with each fee. Text describing the conditions under which a fee may be imposed must appear in the table directly to the right of the numeric fee amount disclosed pursuant to paragraph (b)(2)(ii)(A) of this section. The information required by paragraph (b)(2)(ii)(B) of this section must be generally grouped together. The information required by paragraphs (b)(2)(ii)(C) through (E) of this section must be generally grouped together.

(C) *Multiple service plan disclosures.* When providing disclosures in compliance with paragraph (b)(3)(iii)(B)(*1*) of this section and disclosing the fee schedules of multiple service plans together on one form, the fees required to be listed pursuant to paragraphs (b)(2)(i)(B)(*1*) through (*7*) of this section that vary among service plans must be generally grouped together, and the fees that are the same across all service plans must be grouped together. If the periodic fee varies between service plans, the financial institution must use the term ''plan fee,'' or a substantially similar term when disclosing the periodic fee for each service plan. When providing disclosures for multiple service plans on

one short form in compliance with paragraph (b)(3)(iii)(B)(*1*) of this section, the fees disclosed pursuant to paragraph (b)(2)(i)(B)(*8*) of this section must be grouped with the fees that are the same across all service plans.

(ii) *Prominence and size*—(A) *General.* All text used to disclose information pursuant to paragraph (b)(2) of this section must be in a single, easy-to-read typeface. All text included in the tables required to be disclosed pursuant to paragraph (b)(3)(iii) of this section must be all black or one color type and printed on a white or other neutral contrasting background whenever practical.

(B) *Short form*—(*1*) *Payroll card account and government benefit account notices.* The information required by paragraph (b)(2)(i)(A) of this section and § 1005.15(c)(2), when applicable, must appear in a minimum eight-point font or the corresponding pixel size and appear in no larger a font than what is used for the information required to be disclosed by paragraphs (b)(2)(i)(B)(*1*) through (*4*) of this section.

(*2*) *Fees and other information.* Fee amounts disclosed pursuant to paragraphs (b)(2)(i)(B)(*1*) through (*4*) of this section must be more prominent than the other parts of the disclosures required by paragraph (b)(2)(i) of this section and appear in a minimum eleven-point font or the corresponding pixel size. Disclosures required by paragraphs (b)(2)(i)(B)(*5*) through (*9*) of this section must appear in a minimum eight-point font or the corresponding pixel size and appear in no larger a font than what is used for the information required to be disclosed by paragraphs (b)(2)(i)(B)(*1*) through (*4*) of this section. Disclosures required by paragraphs (b)(2)(i)(B)(*10*) through (*14*) of this section must appear in a minimum seven-point font or the corresponding pixel size and appear in no larger a font than what is used for the information required to be disclosed by paragraphs (b)(2)(i)(B)(*5*) through (*8*) of this section. Additionally, the statement disclosed pursuant to paragraph (b)(2)(i)(B)(*10*) of this section, and the telephone number and URL disclosed pursuant to paragraph (b)(2)(i)(B)(*11*) of this section must be more prominent than the information disclosed pursuant to paragraphs (b)(2)(i)(B)(*12*) through (*14*) of this section and paragraph (b)(2)(i)(C) of this section. Text used to distinguish each of the two fees that are required to be disclosed by paragraphs (b)(2)(i)(B)(*2*), (*3*), and (*5*) of this section, or to explain the duration of inactivity that triggers a financial institution to impose an inactivity fee as required by paragraph (b)(2)(i)(B)(*7*) of this section must appear in a minimum six-point font or the corresponding pixel size and appear in no larger a font than what is used for the information required to be disclosed by paragraphs (b)(2)(i)(B)(*9*) through (*12*) of this section.

(*3*) *Disclosing variable fees.* The explanatory text disclosed pursuant to paragraph (b)(2)(i)(C) of this section, when applicable, must appear in a minimum seven-point font or the corresponding pixel size and appear in no larger a font than what is used for the information required to be disclosed by paragraphs (b)(2)(i)(B)(*5*) through (*8*) of this section.

(C) *Long form.* Disclosures required by paragraph (b)(2)(ii) of this section must appear in a minimum eight-point font or the corresponding pixel size.

(D) *Multiple service plan short form.* When providing disclosures in compliance with paragraph (b)(3)(iii)(B)(*1*) of this section and disclosing the fee schedules of multiple service plans together in one form, disclosures required by paragraphs (b)(2)(i)(B)(*1*) through (*9*) must appear in a minimum seven-point font or the corresponding pixel size. Disclosures required by paragraphs (b)(2)(i)(B)(*10*) through (*14*) of this section must appear in the font sizes set forth in paragraph (b)(4)(ii)(B)(*2*) of this section.

(5) *Segregation.* Disclosures required by this section that are provided in writing or electronically must be segregated from everything else and must contain only information that is directly related to the disclosures required under this section.

(6) *Prepaid accounts acquired in foreign languages.* If a financial institution principally uses a foreign language on prepaid account packaging material, by telephone, in person, or on the Web site a consumer utilizes to acquire a prepaid account, then disclosures made pursuant to paragraphs (b)(2)(i) and (b)(2)(ii) of this section must be provided in that same foreign language. A financial institution must also provide the information required to be disclosed by paragraph (b)(2)(ii) of this section in English upon a consumer's request and on any part of the Web site where it provides the long form disclosure in a foreign language.

(7) *Disclosures on prepaid account access devices.* The name of the financial institution and the URL of the Web site and a telephone number a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. If a financial institution does not provide a physical access device in connection with a prepaid account, the disclosure must appear at the URL or other entry point a consumer must visit to access the prepaid account electronically. A disclosure made on an accompanying document, such as a terms and conditions document, on packaging material surrounding an access device, or on a sticker or other label affixed to an access device does not constitute a disclosure on the access device.

(c) *Access to prepaid account information*—(1) *Periodic statement alternative.* A financial institution need not furnish periodic statements required by § 1005.9(b) if the institution makes available to the consumer:

(i) The consumer's account balance, through a readily available telephone line;

(ii) An electronic history of the consumer's account transactions, such as through a Web site, that covers at least 18 months preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 18 months preceding the date the financial institution receives the consumer's request.

(2) *Information included on electronic or written histories.* The history of account transactions provided under paragraphs (c)(1)(ii) and (iii) of this section must include the information set forth in § 1005.9(b).

(3) *Inclusion of all fees charged.* A periodic statement furnished pursuant to § 1005.9(b) for a prepaid account, an electronic history of account transactions whether provided under paragraph (c)(1)(ii) of this section or otherwise, and a written history of account transactions provided under paragraph (c)(1)(iii) of this section must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise.

(4) *Summary totals of fees, deposits, and debits.* A periodic statement furnished pursuant to § 1005.9(b) for a prepaid account, an electronic history of account transactions whether provided under paragraph (c)(1)(ii) of this section or otherwise, and a written history of account transactions provided under paragraph (c)(1)(iii) of this section must include a summary total of the amount of all fees assessed against the consumer's prepaid account, the total amount of all deposits to the account, and the total amount of all debits from the account, for the prior calendar month and for the calendar year to date.

(d) *Modified disclosure requirements.* A financial institution that provides information under paragraph (c)(1) of

this section shall comply with the following:

(1) *Initial disclosures.* The financial institution shall modify the disclosures under § 1005.7(b) by disclosing:

(i) *Access to account information.* A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of a Web site, and a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by § 1005.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph (d)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph (a) of appendix A–7 of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A–7 of this part, in place of the notice required by § 1005.7(b)(10).

(2) *Annual error resolution notice.* The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A–7 of this part, in place of the notice required by § 1005.8(b). Alternatively, a financial institution may include on or with each electronic and written history provided in accordance with paragraph (c)(1) of this section, a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph (b) of appendix A–3 of this part, modified as necessary to reflect the error resolution provisions set forth in paragraph (e) of this section.

(e) *Modified limitations on liability and error resolution requirements*—(1) *Modified limitations on liability requirements.* A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:

(i) For purposes of § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer's account under paragraph (c)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the unauthorized transfer; or

(B) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (c)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) A financial institution may comply with paragraph (e)(1)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(2) *Modified error resolution requirements.* A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:

(i) The financial institution shall comply with the requirements of § 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of:

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (c)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (c)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (e)(2)(i) of this section, a financial institution complies with the requirements for resolving errors in § 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

(3) *Limitations on liability and error resolution for unverified accounts.* For prepaid accounts that are not payroll card accounts or government benefit accounts, if a financial institution discloses to the consumer the risks of not registering a prepaid account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A–7 of this part, a financial institution is not required to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account for which it has not completed its collection of consumer identifying information and identity verification. Once a consumer's identity has been verified, however, a financial institution must limit the consumer's liability for unauthorized transfers and resolve any errors that occurred prior to verification that satisfy the timing requirements of §§ 1005.6 or 1005.11, or the modified timing requirements in this paragraph (e), as applicable.

(f) *Initial disclosure of fees and other key information.* In addition to disclosing any fees imposed by a financial institution for electronic fund transfers or for the right to make electronic fund transfers, a financial institution must also include in its initial disclosures given pursuant to § 1005.7(b)(5) all other fees imposed by the financial institution in connection with a prepaid account. For each fee, a financial institution must disclose the amount of the fee, the conditions, if any, under which the fee may be imposed, waived, or reduced, and, to the extent known, whether any third party fees may apply. These disclosures must include all of the information required to be disclosed pursuant to paragraph (b)(2)(ii)(B) of this section and must be provided in a form substantially similar to Sample Form A–10(e) in appendix A of this part.

(g) *Credit card plans linked to prepaid accounts*—(1) *Prohibitions.* A financial institution that establishes or holds a prepaid account shall not—

(i) Prior to 30 calendar days after the prepaid account has been registered, open a credit card account subject to Regulation Z (12 CFR part 1026) for a holder of a prepaid account, or provide a solicitation or an application to the holder of the prepaid account to open a credit card account subject to Regulation Z, that would be accessed by an access device for the prepaid account where the access device is a credit card subject to Regulation Z or accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. For purposes of this paragraph, the term *solicitation* means an offer by the person to open a credit or charge card account subject to Regulation Z that does not require the consumer to complete an application. A ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of this paragraph.

(ii) Allow a prepaid account access device to access a credit plan subject to Regulation Z (12 CFR part 1026) that would make the prepaid account access device into a credit card at any time prior to 30 calendar days after the prepaid account has been registered.

(iii) Prior to 30 calendar days after the prepaid account has been registered, allow credit extensions from a credit plan subject to Regulation Z (12 CFR

part 1026) to be deposited in the prepaid account, where the credit plan is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

(2) *Requirements.* Where a credit card plan subject to Regulation Z (12 CFR part 1026) may be offered at any point to a consumer with respect to a prepaid account that is accessed by an access device for the prepaid account where the access device is a credit card under Regulation Z or is accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a financial institution that establishes or holds such a prepaid account may not apply different terms and conditions to a consumer's account that do not relate to an extension of credit, carrying a credit balance, or credit availability, depending on whether the consumer elects to link such a credit card plan to the prepaid account.

(h) *Compliance dates*—(1) *Effective date for non-disclosure requirements and for disclosures on newly created prepaid account packaging or materials.* Except as provided in paragraph (h)(2) of this section, the requirements of the Act and this subpart, as modified by this section, apply to prepaid accounts on and after [*date that is nine months from the date a final rule is published in the* **Federal Register**]. The requirements of paragraphs (b) and (f)(2) of this section apply to prepaid account packaging, access devices, and other physical materials that are manufactured, printed, or otherwise prepared in connection with a prepaid account on and after nine months, as well as to disclosures and other information made available to consumers online or by telephone after nine months.

(2) *Prohibition on sale or distribution of non-compliant prepaid account packaging access devices, or other physical materials.* After [*date that is 12 months from the date a final rule is published in the* **Federal Register**], all prepaid accounts and related packaging, access devices, and other physical materials that are offered, sold, or otherwise made available to consumers in connection with a prepaid account must comply with the requirements of this section.

■ 8. Add § 1005.19 to read as follows:

§ 1005.19 Internet posting of prepaid account agreements.

(a) *Definitions*—(1) *Agreement.* For purposes of this section, ''agreement'' or ''prepaid account agreement'' means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. ''Agreement'' or ''prepaid account agreement'' also includes fee information, as defined in paragraph (a)(3) of this section.

(2) *Amends.* For purposes of this section, an issuer ''amends'' an agreement if it makes a substantive change (an ''amendment'') to the agreement. A change is substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. Any change in the fee information, as defined in paragraph (a)(3) of this section, is deemed to be substantive.

(3) *Fee information.* For purposes of this section, ''fee information'' means the information required to be disclosed by § 1005.18(b)(2)(ii).

(4) *Issuer.* For purposes of this section, ''issuer'' or ''prepaid account issuer'' means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement.

(5) *Offers.* For purposes of this section, an issuer ''offers'' or ''offers to the public'' an agreement if the issuer solicits applications for or otherwise makes available prepaid accounts that would be subject to that agreement.

(6) *Open account.* For purposes of this section, a prepaid account is an ''open account'' or ''open prepaid account'' if (i) there is an outstanding balance in the account; (ii) the consumer can load funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit through a credit plan that would be a credit card account under Regulation Z, 12 CFR part 1026 that is offered in connection with a prepaid account. A prepaid account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) is considered an ''open account'' or ''open prepaid account.''

(7) *Prepaid account.* For purposes of this section, ''prepaid account'' means a prepaid account as defined in § 1005.2(b)(3).

(b) *Submission of agreements to the Bureau*—(1) *Quarterly submissions.* An issuer must make quarterly submissions to the Bureau, in the form and manner specified by the Bureau. Quarterly submissions must be sent to the Bureau no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. Each submission must contain:

(i) Identifying information about the issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), and the name of the program manager, if any, for each agreement;

(ii) The prepaid account agreements that the issuer offered to the public as of the last business day of the preceding calendar quarter that the issuer has not previously submitted to the Bureau;

(iii) Any prepaid account agreement previously submitted to the Bureau that was amended during the preceding calendar quarter and that the issuer offered to the public as of the last business day of the preceding calendar quarter, as described in paragraph (b)(2) of this section; and

(iv) Notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer is withdrawing, as described in paragraphs (b)(3), (4)(iii), and (5)(iii) of this section.

(2) *Amended agreements.* If a prepaid account agreement has been submitted to the Bureau, the agreement has not been amended, and the issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. If a prepaid account agreement that previously has been submitted to the Bureau is amended, and the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective.

(3) *Withdrawal of agreements.* If an issuer no longer offers to the public a prepaid account agreement that previously has been submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement.

(4) *De minimis exception.* (i) An issuer is not required to submit any prepaid account agreements to the Bureau if the issuer had fewer than 3,000 open prepaid accounts as of the last business day of the calendar quarter.

(ii) If an issuer that previously qualified for the de minimis exception

ceases to qualify, the issuer must begin making quarterly submissions to the Bureau no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify.

(iii) If an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make quarterly submissions to the Bureau until the issuer notifies the Bureau that it is withdrawing all agreements it previously submitted to the Bureau.

(5) *Product testing exception.* (i) An issuer is not required to submit to the Bureau a prepaid account agreement if, as of the last business day of the calendar quarter, the agreement:

(A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time;

(B) Is used for fewer than 3,000 open prepaid accounts; and

(C) Is not offered to the public other than in connection with such a product test.

(ii) If an agreement that previously qualified for the product testing exception ceases to qualify, the issuer must submit the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify.

(iii) If an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn.

(6) *Form and content of agreements submitted to the Bureau*—(i) *Form and content generally.* (A) Each agreement must contain the provisions of the agreement and the fee information in effect as of the last business day of the preceding calendar quarter.

(B) Agreements must not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number.

(C) The following are not deemed to be part of the agreement for purposes of this section, and therefore are not required to be included in submissions to the Bureau:

(*1*) Ancillary disclosures required by state or Federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act;

(*2*) Solicitation or marketing materials;

(*3*) Periodic statements; and

(*4*) Documents that may be sent to the consumer along with the prepaid account or prepaid account agreement such as a cover letter, a validation sticker on the card, or other information about card security.

(D) Agreements must be presented in a clear and legible font.

(ii) *Fee information.* Fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. The agreement or addendum thereto must contain all of the fee information, as defined by paragraph (a)(3) of this section.

(iii) *Integrated agreement.* Issuers may not provide provisions of the agreement or fee information to the Bureau in the form of change-in-terms notices or riders (other than the optional fee information addendum). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addendum, as appropriate.

(7) *Bureau posting of prepaid account agreements.* The Bureau shall receive the prepaid account agreements submitted by prepaid account issuers pursuant to paragraph (b) of this section, and shall post such agreements on a publicly-available Web site established and maintained by the Bureau.

(c) *Posting of agreements offered to the public.* (1) Except as provided below, an issuer must post and maintain on its publicly available Web site the prepaid account agreements that the issuer is required to submit to the Bureau under paragraph (b) of this section.

(2) Agreements posted pursuant to this paragraph (c) must conform to the form and content requirements for agreements submitted to the Bureau specified in paragraphs (b)(6)(i)(B) through (D) of this section.

(3) Agreements posted pursuant to this paragraph (c) must be accurate and updated whenever changes are made.

(4) Agreements posted pursuant to this paragraph (c) may be posted in any electronic format that is readily usable by the general public. Agreements must be placed in a location that is prominent and readily accessible by the public and must be accessible without submission of personally identifiable information.

(d) *Agreements for all open accounts*—(1) *Availability of individual consumer's prepaid account agreement.* With respect to any open prepaid account, unless the prepaid account agreement is provided to the Bureau pursuant to paragraph (b) of this section and posted to the issuer's publicly available Web site pursuant to paragraph (c) of this section, an issuer must either:

(i) Post and maintain the consumer's agreement on its Web site; or

(ii) Promptly provide a copy of the consumer's agreement to the consumer upon the consumer's request. If the issuer makes an agreement available upon request, the issuer must provide the consumer with the ability to request a copy of the agreement by telephone. The issuer must send to the consumer a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request.

(2) *Form and content of agreements.* (i) Except as provided in this paragraph (d), agreements posted on the issuer's Web site pursuant to paragraph (d)(1)(i) of this section or sent to the consumer upon the consumer's request pursuant to paragraph (d)(1)(ii) of this section must conform to the form and content requirements for agreements submitted to the Bureau as specified in paragraph (b)(6) of this section.

(ii) If the issuer posts an agreement on its Web site under paragraph (d)(1)(i) of this section, the agreement may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the consumer.

(iii) Agreements posted or otherwise provided pursuant to this paragraph (d) may contain personally identifiable information relating to the consumer, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the consumer or other authorized persons.

(iv) Agreements posted or otherwise provided pursuant to this paragraph (d) must set forth the specific provisions and fee information applicable to the particular consumer.

(v) Agreements posted pursuant to paragraph (d)(1)(i) of this section must be accurate and updated whenever changes are made. Agreements provided upon consumer request pursuant to paragraph (d)(1)(ii) of this section must be accurate as of the date the agreement is mailed or electronically delivered to the consumer.

(vi) Agreements provided upon consumer request pursuant to paragraph (d)(1)(ii) of this section must be provided by the issuer in paper form, unless the consumer agrees to receive the agreement electronically.

(e) *E-Sign Act requirements.* Except as otherwise provided in this section, issuers may provide prepaid account agreements in electronic form under paragraphs (c) and (d) of this section without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in

Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

■ 9. Appendix A to part 1005 is amended by revising A–5 and A–7, adding new A–10 and reserving A–11 through A–29 as follows:

Appendix A to Part 1005—Model Disclosure Clauses and Forms

* * * * *

A–5—MODEL CLAUSES FOR GOVERNMENT AGENCIES (§ 1005.15(e)(1) AND (2))

(a) *Disclosure by government agencies of information about obtaining account information for government benefit accounts (§ 1005.15(e)(1)(i)).*

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM) (a POS terminal)] [when you make a balance inquiry at an ATM] [when you make a balance inquiry at specified locations]. This information, along with an 18 month history of account transactions, is also available online at [Internet address].

You also have the right to obtain at least 18 months of written history of account transactions by calling [telephone number], or by writing to us at [address]. You will not be charged a fee for this information unless you request it more than once per month. [Optional: Or you may request a written history of account transactions by contacting your caseworker.]

(b) *Disclosure of error resolution procedures for government agencies that do not provide periodic statements (§ 1005.15(e)(1)(ii) and (e)(2)).*

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] Write us at [insert address] [or email us at [insert email address]] as soon as you can, if you think an error has occurred in your [agency's name for program] account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address] [optional: Or by contacting your caseworker]. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

* * * * *

A–7—Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))

(a) *Disclosure by financial institutions of information about obtaining account information for prepaid accounts (§ 1005.18(d)(1)(i)).*

You may obtain information about the amount of money you have remaining in your prepaid account by calling [telephone number]. This information, along with an 18 month history of account transactions, is also available online at [Internet address].

You also have the right to obtain at least 18 months of written history of account transactions by calling [telephone number], or by writing us at [address]. You will not be charged a fee for this information unless you request it more than once per month.

(b) *Disclosure of error-resolution procedures for financial institutions that do not provide periodic statements (§ 1005.18(d)(1)(ii) and (d)(2)).*

In Case of Errors or Questions About Your Prepaid Account Telephone us at [telephone number] or Write us at [address] [or email us at [email address]] as soon as you can, if you think an error has occurred in your prepaid account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address]. You will need to tell us:

Your name and [prepaid account] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above] [or visit [Internet address]].

(c) *Warning regarding unregistered prepaid accounts (§ 1005.18(e)(3)).*

It is important to register your prepaid account as soon as possible. Until you register your account, we are not required to research or resolve errors regarding your account. To register your account, go to [Internet address] or call us at [telephone number]. We will ask you for identifying information about yourself (including your full name, address, date of birth, and [Social Security Number] [government-issued identification number]), so that we can verify your identity. Once we have done so, we will address your complaint or question as set forth above.

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A–10—Model Forms and Sample Forms for Financial Institutions Offering Prepaid Accounts (§ 1005.15(c)(2) and § 1005.18(b))

A-10(a) – Model Form for Short Form Disclosures for Government Benefit Accounts

(§ 1005.15(c)(2) and § 1005.18(b)(3)(iii)(A))

You do not have to get your payments on this prepaid card.
Ask about other ways to get your payments.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$0	**$0** with sig. **$0** with PIN	**$0** in-network **$2.00** out-of-network	**N/A**

No overdraft or credit-related fees.

ATM balance inquiry (in-network or out-of-network)	$0 or $1.00*
Customer service	$1.50 per call
Inactivity (no transactions for 3 months)	$4.50 per month
[Incidence-based fee]	$2.95
[Incidence-based fee]	$3.95
[Incidence-based fee]	$1.00

*Fees can be lower depending on how and where this card is used.

We charge 6 other fees not listed here.

Register your card with XYZ Prepaid Company to protect your money.

For more information about prepaid cards, visit *cfpb.gov/prepaids*.

A-10(b) – Model Form for Short Form Disclosures for Payroll Card Accounts

(§ 1005.18(b)(2)(i)(A) and § 1005.18(b)(3)(iii)(A))

You do not have to accept this payroll card.
Ask your employer about other ways to get your wages.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$0	**$0** with sig. **$0** with PIN	**$0** in-network **$2.00** out-of-network	**N/A**

No overdraft or credit-related fees.

ATM balance inquiry (in-network or out-of-network)	$0 or $1.00*
Customer service	$1.50 per call
Inactivity (no transactions for 3 months)	$4.50 per month
[Incidence-based fee]	$2.95
[Incidence-based fee]	$3.95
[Incidence-based fee]	$1.00

*Fees can be lower depending on how and where this card is used.

We charge 6 other fees not listed here.

Register your card with XYZ Prepaid Company to protect your money.

For more information about prepaid cards, visit *cfpb.gov/prepaids.*

A-10(c) – Model Form for Short Form Disclosures for Prepaid Accounts With Overdraft Services and Other Credit Features (§ 1005.18(b)(2)(i)(B)(*9*) and § 1005.18(b)(3)(iii)(A))

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$4.95*	**$0** with sig. **$0** with PIN	**$0** in-network **$2.00** out-of-network	**$2.00***

This card may charge credit-related fees.

ATM balance inquiry (in-network or out-of-network)	$0 or $1.00
Customer service	$1.50 per call
Inactivity (no transactions for 3 months)	$4.50 per month
[Incidence-based fee]	$2.95
[Incidence-based fee]	$3.95
[Incidence-based fee]	$1.00

*Fees can be lower depending on how and where this card is used.

We charge 6 other fees not listed here.
Find details and conditions for all fees and services inside the package or call **800-234-5678** or visit ***bit.ly/XYZprepaids***.

Register your card with XYZ Prepaid Company to protect your money.

This card does not provide [FDIC][NCUSIF] insurance.

For more information about prepaid cards, visit *cfpb.gov/prepaids.*

A-10(d) – Model Form for Short Form Disclosures for Prepaid Accounts Without Overdraft Services and Other Credit Features (§ 1005.18(b)(2)(i)(B)(*9*) and § 1005.18(b)(3)(iii)(A))

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$4.95*	**$0** with sig. **$0** with PIN	**$0** in-network **$2.00** out-of-network	**$2.00***

No overdraft or credit-related fees.

ATM balance inquiry (in-network or out-of-network)	$0 or $1.00
Customer service	$1.50 per call
Inactivity (no transactions for 3 months)	$4.50 per month
[Incidence-based fee]	$2.95
[Incidence-based fee]	$3.95
[Incidence-based fee]	$1.00

*Fees can be lower depending on how and where this card is used.

We charge 6 other fees not listed here.
Find details and conditions for all fees and services inside the package or call **800-234-5678** or visit ***bit.ly/XYZprepaids***.

Register your card with XYZ Prepaid Company to protect your money.

This card does not provide [FDIC][NCUSIF] insurance.

For more information about prepaid cards, visit *cfpb.gov/prepaids.*

A-10(e) – Sample Form for Long Form Disclosures for Prepaid Accounts

(§ 1005.18(b)(3)(iii)(A))

Fee description	Amount	Details
Get started		
Card purchase fee	$3.95	
Monthly usage		
Monthly fee	$4.95	Charge waived with direct deposit or in any billing cycle when you load at least $1,000 or have at least 30 qualifying purchases posted to your account.
Add money		
Direct deposit	$0	
Cash reload	$2.00	Additional reload network fees may apply.
Spend money within the U.S.		
Per purchase with PIN	$0	
Per purchase with signature	$0	
Online bill pay service by check	$2.00	Charge for having us send a check to pay a bill on your behalf. Charge waived for paying a bill online.
Get cash		
ATM withdrawal, in-network	$0	"In Network" refers to the XYZMoney ATM network. Locations can be found at xyzprepaid.com or xyzmoney.com. You will not be charged a fee by XYZ Prepaid Card or the ATM operator.
ATM withdrawal, out-of-network	$2.00	"Out of Network" refers to all the ATMs outside of the XYZMoney ATM network. You may also be charged a fee by the ATM operator even if you do not complete a transaction.
Bank teller cash withdrawal	$1.25	
Information		
Customer service	$1.50	per call
ATM balance inquiry, in-network	$0	"In Network" refers to the XYZMoney ATM network. Locations can be found at xyzprepaid.com or xyzmoney.com.
ATM balance inquiry, out-of-network	$1.00	"Out of Network" refers to all the ATMs outside of the XYZMoney ATM network. You may also be charged a fee by the ATM operator even if you do not complete a transaction.
Other		
Replacement card	$4.00	Card will arrive within 5-7 business days.
Expedited replacement card service	$25.00	Card will arrive within 2 business days.
Inactivity	$4.50	You will be charged this fee each month after you have not completed a transaction using your prepaid account for 3 months.
Spend money outside the U.S.		
Each international transaction	3.0%	of total transaction amount
International ATM balance inquiry	$5.00	This is our fee. You may also be charged a fee by the ATM operator.

This card does not provide [FDIC][NCUSIF] insurance.

Contact XYZ Prepaid Company by calling 1-800-555-5555, by mail at 555 Street Name, Anytown, NY, or visit xyzprepaid.com.

For more info about prepaid cards, visit *consumerfinance.gov/prepaids*. If you have a complaint about prepaid cards, call 1-855-411-2372 or visit *consumerfinance.gov/complaint*.

A-10(f) – Model Form for Short Form Disclosures for Prepaid Accounts With Multiple Service Plans (§ 1005.18(b)(3)(iii)(B)(*1*))

	Pay-as-you-go plan	Monthly plan	Annual plan
Plan fee	$0.00	$4.95 per mo.	$49.95 per yr.
Per purchase	$2.00*	$0	$0

This card may charge credit-related fees.

	Applies to all plans
ATM withdrawal	$1.95*
Cash reload	$0
ATM balance inquiry	$1.00*
Customer service	$1.00 per call
Inactivity (no transactions for 3 months)	$1.95 per month
[Incidence-based fee]	$2.95
[Incidence-based fee]	$3.95

*Fees can be lower depending on how and where this card is used.

We charge 6 other fees not listed here.
Find details and conditions for all fees and services inside the package or call **800-234-5678** or visit ***bit.ly/XYZprepaids***.

Register your card with XYZ Prepaid Company to protect your money.

This card does not provide [FDIC][NCUSIF] insurance.

For more information about prepaid cards, visit *cfpb.gov/prepaids.*

A-10(g) – Sample Form for Long Form Disclosures for Prepaid Accounts With Multiple Service Plans (§ 1005.18(b)(3)(iii)(B)(*2*))

Fee description	Pay-as-you-go plan	Monthly plan	Annual plan	Details
Monthly usage				
Plan fee	$0	$4.95	$49.95	Charge waived with direct deposit or in any billing cycle when you load at least $1,000 or have at least 30 qualifying purchases posted to your account.
Spend money within the U.S.				
Per purchase with PIN	$1.00	$0	$0	
Per purchase with signature	$2.00	$0	$0	
Information				
Customer service	$1.00	$0	$0	per call
ATM balance inquiry, in-network	$0	$0	$0	"In Network" refers to the ABCMoney ATM network. Locations can be found at xyzprepaid.com or abcmoney.com.
ATM balance inquiry, out-of-network	$1.00	$0	$0	"Out of Network" refers to all the ATMs outside of the XYZ ATM network. You may also be charged a fee by the ATM owner even if you do not complete a transaction.

Fee description	All plans	Details
Get started		
Card purchase fee	$3.95	
Add money		
Direct deposit	$0	
Cash reload	$2.00	Additional reload network fees may apply.
Spend money within the U.S.		
Card to card transfer	$0.75	
Online bill pay service by check	$2.00	Charge for having us send a check to pay a bill on your behalf. Charge waived for paying a bill online.
Get cash		
ATM withdrawal, in-network	$0	
ATM withdrawal, out-of-network	$1.95	
Bank teller cash withdrawal	$1.25	
Other		
Inactivity (no transactions for 3 months)	$1.95	You will be charged this fee each month after you have not completed a transaction using your prepaid account for 3 months.

This card does not provide [FDIC][NCUSIF] insurance.

Contact XYZ Prepaid Company by calling 1-800-555-5555, by mail at 555 Street Name, Anytown, NY, or visit xyzprepaid.com.

For more info about prepaid cards, visit *consumerfinance.gov/prepaids*. If you have a complaint about prepaid cards, call 1-855-411-2372 or visit *consumerfinance.gov/complaint*.

A–11 through A–29 [Reserved]

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■ 10. In Supplement I to part 1005:

■ a. Under *Section 1005.2 Definitions:*

■ i. In subsection *2(b) Account,* paragraph 2 is revised and paragraph 3 is removed.

■ ii. Add subsection *Paragraph 2(b)(3)(i).*

■ iii. Add subsection *Paragraph 2(b)(3)(ii).*

■ iv. Add subsection *Paragraph 2(b)(3)(iv).*

■ b. Under *Section 1005.10 Preauthorized Transfers:*

■ i. In subsection *10(e) Compulsory Use:*

■ A. Revise subsection *10(e)(1) Credit.*

■ B. In subsection *10(e)(2) Employment or Government Benefit,* paragraph 2 is added.

■ c. Under *Section 1005.12—Relation to Other Laws:*

■ i. Revise subsection *12(a) Relation to Truth in Lending.*

■ ii. In subsection *12(b) Preemption of Inconsistent State Laws,* paragraph 2 is revised and paragraphs 3 and 4 are added.

■ d. New *Section 1005.15 Electronic Fund Transfer of Government Benefits* is added.

■ e. Under *Section 1005.18 Requirements for Financial Institutions Offering Payroll Card Accounts,* the heading is revised.

■ f. Under revised *Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts:*

■ i. In subsection *18(a) Coverage,* paragraphs 1 and 2 are revised.

■ ii. Revise subsection *18(b*), including the subheading.

■ iii. Revise subsection *18(c),* including the subheading.

■ iv. Add subsection *18(e) Modified Limitations on Liability and Error Resolution Requirements.*

■ v. Add subsection *18(g) Credit Card Plans Linked to Prepaid Accounts.*

■ g. New *Section 1005.19 Internet Posting of Prepaid Account Agreements* is added.

■ h. Under *Section 1005.30 Remittance Transfer Definitions:*

■ i. In subsection *30(g) Sender,* paragraph 3 is revised.

The revisions, additions, and removals read as follows:

Supplement I to Part 1005—Official Interpretations

Section 1005.2—Definitions

* * * * *

2(b) Account

* * * * *

2. Examples of accounts not covered by Regulation E (12 CFR part 1005) include:

i. Profit-sharing and pension accounts established under a trust agreement, which are exempt under § 1005.2(b)(2).

ii. Escrow accounts, such as those established to ensure payment of items such as real estate taxes, insurance premiums, or completion of repairs or improvements.

iii. Accounts for accumulating funds to purchase U.S. savings bonds.

* * * * *

Paragraph 2(b)(3)(i)

1. *Debit card includes prepaid card.* For purposes of subpart A, except for § 1005.17, the term debit card also includes a prepaid card.

2. *Established primarily for personal, family, or household purposes.* Section 1005.2(b)(3) applies only to cards, codes, or other devices that are acquired by or provided to a consumer primarily for personal, family, or household purposes. For additional guidance, see comments 20(a)–4 and –5.

3. *Issued on a prepaid basis.* To be issued on a prepaid basis, a prepaid account must be loaded with funds when it is first provided to the consumer for use. For example, if a consumer purchases a prepaid account and provides funds that are loaded onto a card at the time of purchase, the prepaid account is issued on a prepaid basis. A prepaid account offered for sale in a retail store is not issued on a prepaid basis until purchased by the consumer.

4. *Capable of being loaded with funds.* A prepaid account that is not issued on a prepaid basis but is capable of being loaded with funds thereafter includes a prepaid card issued to a consumer with a zero balance to which funds may be loaded by the consumer or a third party subsequent to issuance. This does not include a product that can never store funds, such as a digital wallet that only holds payment credentials for other accounts.

5. *Issued on a prepaid basis or capable of being loaded with funds.* To satisfy § 1005.2(b)(3)(i)(A), a prepaid account must either be issued on a prepaid basis or be capable of being loaded with funds. This means that the prepaid account must be capable of holding funds, rather than merely acting as a pass-through vehicle. For example, if a product is only capable of storing a consumer's payment credentials for other accounts but is incapable of having funds stored on it, such a product is not a prepaid account. However, if a product allows a consumer to transfer funds, which can be stored before the consumer designates a destination for the funds, the product satisfies § 1005.2(b)(3)(i)(A).

6. *Not required to be reloadable.* Prepaid accounts need not be reloadable by the consumer or a third party.

7. *Redeemable upon presentation at multiple, unaffiliated merchants.* For guidance, see comments 20(a)(3)–1 and –2.

8. *Person-to-person transfers.* A prepaid account capable of person-to-person transfers is an account that allows a consumer to send funds by electronic fund transfer to another consumer or business. An account may qualify as a prepaid account if it permits person-to-person transfers even if it is neither redeemable upon presentation at multiple, unaffiliated merchants for goods or services, nor usable at automated teller machines. A transaction involving a store gift card would not be a person-to-person transfer if it could only be used to make payments to the merchant or affiliated group of merchants on whose behalf the card was issued.

9. *Marketed and labeled as a gift card or gift certificate.* Section 1005.2(b)(3)(i)(C) excludes, among other things, reloadable general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates, whereas § 1005.20(b)(2) excludes such products that are marketed or labeled as gift cards or gift certificates. Comment 20(b)(2)–2 describes, in part, a network-branded general purpose reloadable card that is principally advertised as a less-costly alternative to a bank account but is promoted in a television, radio, newspaper, or internet advertisement, or on signage as ''the perfect gift'' during the holiday season. For purposes of § 1005.20, such a product would be considered marketed as a gift card or gift certificate because of this occasional holiday marketing activity. For purposes of § 1005.2(b)(3)(i)(C), however, such a product would not be considered to be both marketed and labeled as a gift card or gift certificate and thus would be covered by the definition of prepaid account.

Paragraph 2(b)(3)(ii)

1. *Certain employment-related cards not covered as payroll card accounts.* The term ''payroll card account'' does not include a card used solely to disburse incentive-based payments (other than commissions which can represent the primary means through which a consumer is paid), such as bonuses, which are unlikely to be a consumer's primary source of salary or other compensation. The term also does not include a card used solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments. Similarly, a payroll card account does not include a card that is used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations when other payment methods are unavailable. While such cards would not be payroll card accounts, such cards could constitute prepaid accounts generally, provided the other conditions of the definition of that term in § 1005.2(b)(3) are satisfied. In addition, all transactions involving the transfer of funds to or from a payroll card account or prepaid account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive-based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

Paragraph 2(b)(3)(iv)

1. *Excluded health care and employee benefit related prepaid products.* For purposes of § 1005.2(b)(3)(iv), ''health savings account'' means a health savings account as defined in 26 U.S.C. 223(d); ''flexible spending account'' means a cafeteria plan which provides health benefits or a health flexible spending arrangement pursuant to 26 U.S.C. 125; ''medical savings account'' means an Archer MSA as defined in 26 U.S.C. 220(d); and ''health reimbursement arrangement'' means a health

reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of 26 U.S.C. 106.

* * * * *

Section 1005.10 Preauthorized Transfers

* * * * *

10(e) Compulsory Use

10(e)(1) Credit

1. *General rule for loan payments.* Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis.

2. *Overdraft credit plans not tied to prepaid accounts.* Section 1005.10(e)(1) provides an exception from the general rule for overdraft credit plans other than for a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z, or is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. See Regulation Z 12 CFR 1026.2(a)(15)(i) and related commentary for the definition of credit card. A financial institution may therefore require the automatic repayment of an overdraft credit plan not tied to a prepaid account even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

3. *Applicability to credit accessed by access devices for prepaid accounts.* Under § 1005.10(e)(1), creditors must not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z or by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. *See* Regulation Z 12 CFR 1026.2(a)(15)(i) and related commentary for the definition of credit card. The prohibition in § 1005.10(e)(1) applies to any credit extended under a credit card plan as described above, including credit arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses a credit card plan as discussed above, the resulting credit is subject to the prohibition in § 1005.10(e)(1) since it is incurred through a credit card plan, even though the consumer did not use an associated credit card. An access device is not a credit card under Regulation Z 12 CFR 1026.2(a)(15)(i), comment 2(a)(15)–2.i.F if the access device only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments. Thus, the prohibition in § 1005.10(e)(1) does not apply to credit extended under an overdraft credit plan that is not a credit card account. An overdraft credit plan is not a credit card account if it is accessed only by a prepaid card that only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments.

i. *Automatic periodic repayment plans for credit accessed by access devices for prepaid accounts.* Under Regulation Z 12 CFR 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Under Regulation Z 12 CFR 1026.12(d)(3), with respect to credit card accounts that are accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only in particular prepaid accounts specified by the creditor, a card issuer generally is not prohibited under § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of Regulation Z 12 CFR 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account (such as a prepaid account) more frequently than once per calendar month, pursuant to such a plan. A card issuer for such credit card accounts is prohibited under § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made to the deposit account. Section 1005.10(e)(1) further restricts the card issuer from requiring payment from a deposit account (including a prepaid account) of credit card balances by electronic means on a preauthorized, recurring basis where the credit card account is accessed by an access device for a prepaid account, or is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

4. *Incentives.* A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

i. Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.

ii. Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

10(e)(2) Employment or Government Benefit

* * * * *

2. *Government benefit.* A government agency may not require consumers to receive government benefits by direct deposit to any particular institution. A government agency may require direct deposit of benefits by electronic means if recipients are allowed to choose the institution that will receive the direct deposit. Alternatively, a government agency may give recipients the choice of having their benefits deposited at a particular institution (designated by the government agency) or receiving their benefits by another means.

* * * * *

Section 1005.12 Relation to Other Laws

12(a) Relation to Truth in Lending

1. *Issuance rules for access devices other than access devices for prepaid accounts.* For access devices that also constitute credit cards (other than access devices for prepaid accounts), the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in § 1005.17(a). Regulation Z (12 CFR part 1026) rules apply if there is another type of credit feature; for example, one permitting direct extensions of credit that do not involve the asset account.

2. *Overdraft services (other than for access devices for prepaid accounts).* The addition of an overdraft service, as that term is defined in § 1005.17(a), to an accepted access device (other than an access device for a prepaid account) does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (§ 1005.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft may be assessed on the account (§ 1005.17).

3. *No initial issuance of prepaid access devices with credit card accounts subject to Regulation Z.* An access device for a prepaid account may not access a credit card account under Regulation Z when the access device is issued. Section 1005.18(g)(1)(ii) prohibits a financial institution from allowing an access device for a prepaid account to access a credit plan subject to Regulation Z (12 CFR part 1026) that would make the access device into a credit card at any time prior to 30 calendar days after the prepaid account is registered. Further, § 1005.18(g)(1)(i) also prohibits a financial institution from opening a credit card account subject to Regulation Z (12 CFR part 1026) for a holder of a prepaid account, or providing a solicitation or application to open a credit card account to the holder of a prepaid account, prior to 30 calendar days after the prepaid account has been registered, that would be accessed by the access device for a prepaid account that is a credit card. Regulation Z, 12 CFR 1026.12(h), also requires a credit card issuer to wait at least 30 calendar days from prepaid account registration before opening a credit card account for a holder of the prepaid account, or providing a solicitation or application to the holder of the prepaid account to open a credit card account, that would be accessed by the access device for a prepaid account that is a credit card.

4. *Addition of a credit card account to an access device for a prepaid account.* Regulation Z governs the addition of any credit feature or plan to an access device for a prepaid account where the access device also would be a credit card under Regulation Z (12 CFR part 1026). Regulation Z (12 CFR 1026.2(a)(20), comment 2(a)(20)–2.ii) provides guidance on whether a program constitutes a credit plan. Regulation Z (12 CFR 1026.2(a)(15)(i), comment 2(a)(15))–2) defines the term credit card and provides examples of cards or devices that are and are not credit cards.

5. *Determining applicable regulation related to liability and error resolution.* i. For an account other than a prepaid account where credit is extended incident to an electronic fund transfer under an agreement to extend overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions apply, in addition to § 1026.13(d) and (g) of Regulation Z (which apply because of the extension of credit associated with the overdraft feature on the asset account). With respect to an account other than a prepaid account, incidental credit that is not extended under an agreement between the consumer and the financial institution where the financial institution agrees to extend credit is governed solely by the error resolution procedures in Regulation E and Regulation Z § 1026.13(d) and (g) do not apply. With respect to a prepaid account where credit is extended under a credit plan that is subject to Regulation Z subpart B, Regulation E's liability limitations and error resolution provisions apply, in addition to Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). A credit plan is subject to Regulation Z Subpart B if it is accessed by an access device that is a credit card under Regulation Z or if it is open-end credit under Regulation Z. An access device for a prepaid account is not a credit card if the access device only accesses credit that is not subject to any finance charge described in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments. See Regulation Z comment 2(a)(15))–2.i.F. Incidental credit under a credit plan that only can be accessed by an access device for a prepaid account that is not a credit card is not subject to Regulation Z Subpart B and is governed solely by the error resolution procedures in Regulation E because the credit plan is not accessed by a credit card and the plan is not open-end credit. In this case, Regulation Z § 1026.13(d) and (g) do not apply.

ii. For transactions involving access devices that also function as credit cards under Regulation Z, whether Regulation E or Regulation Z (12 CFR part 1026) applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not include a debit to a consumer asset account, such as a checking account or prepaid account, the liability limitations and error resolution requirements of Regulation Z apply. If the transaction debits an asset account only (with no credit extended), the provisions of Regulation E apply. If the transaction debits an asset account but also draws on an overdraft credit plan subject to Regulation Z attached to the account, Regulation E's liability limitations and error resolution provisions apply, in addition to § 1026.13(d) and (g) of Regulation Z (which apply because of the extension of credit associated with the overdraft feature on the asset account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from an asset account, but also is used to obtain unauthorized cash advances directly from a credit plan that is subject to Regulation Z that is separate from the asset account, both Regulation E and Regulation Z apply.

iii. The following examples illustrate these principles:

A. A consumer has a card that can be used either as a credit card or an access device that draws on the consumer's checking account. When used as a credit card, the card does not first access any funds in the checking account but draws only on a separate credit card account subject to Regulation Z. If the card is stolen and used as a credit card to make purchases or to get cash advances at an ATM from the line of credit, the liability limits and error resolution provisions of Regulation Z apply; Regulation E does not apply.

B. In the same situation, if the card is stolen and is used as an access device to make purchases or to get cash withdrawals at an ATM from the checking account, the liability limits and error resolution provisions of Regulation E apply; Regulation Z does not apply.

C. In the same situation, assume the card is stolen and used both as an access device for the checking account and as a credit card; for example, the thief makes some purchases using the card to access funds in the checking account and other purchases using the card as a credit card. Here, the liability limits and error resolution provisions of Regulation E apply to the unauthorized transactions in which the card was used as an access device for the checking account, and the corresponding provisions of Regulation Z apply to the unauthorized transactions in which the card was used as a credit card.

D. Assume a somewhat different type of card, one that draws on the consumer's checking account and can also draw on an overdraft credit plan subject to Regulation Z attached to the checking account. The overdraft credit plan associated with the card is accessed only when the consumer uses the card to make a purchase (or other transaction) for which there are insufficient or unavailable funds in the checking account. In this situation, if the card is stolen and used to make purchases funded entirely by available funds in the checking account, the liability limits and the error resolution provisions of Regulation E apply. If the use of the card results in an extension of credit that is incident to an electronic fund transfer—*i.e.,* if the transaction is funded partially by funds in the consumer's asset account and partially by credit extended under the overdraft credit plan—the error resolution provisions of § 1026.13(d) and (g) of Regulation Z apply in addition to the Regulation E provisions, but the other liability limit and error resolution provisions of Regulation Z do not. Relatedly, if the use of the card is funded entirely by credit extended under the overdraft credit plan, the transaction is governed solely by the liability limitations and error resolution requirements of Regulation Z. *See* § 1026.13(i).

E. The same principles in comment 12(a))–5.iii.A, B, C, and D apply to an access device for a prepaid account that also is a credit card under Regulation Z.

12(b) Preemption of Inconsistent State Laws

* * * * *

2. *Preemption determinations generally.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination.

3. *Preemption determination—Michigan.* The Board of Governors determined that certain provisions in the state law of Michigan are preempted by the Federal law, effective March 30, 1981:

i. *Definition of unauthorized use.* Section 488.5(4) of the state law of Michigan, governing electronic fund transfers, is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.

ii. *Consumer liability for unauthorized use of an account.* Section 488.14 of the state law of Michigan, governing electronic fund transfers, is inconsistent with § 1005.6 and is less protective of the consumer than the Federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the Federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

iii. *Error resolution.* Section 488.15 of the state law of Michigan, governing electronic fund transfers, is preempted because it is inconsistent with § 1005.11 and is less protective of the consumer than the Federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the Federal law generally requires errors to be resolved within 45 days.

iv. *Receipts and periodic statements.* Sections 488.17 and 488.18 of the state law of Michigan, governing electronic fund transfers, are preempted because they are inconsistent with § 1005.9, other than for transfers of $15 or less pursuant to § 1005.9(e). The state provisions require a different disclosure of information than does the Federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

4. *Preemption determination—Tennessee.* The Bureau determined that the following provision in the state law of Tennessee is preempted by the Federal law, effective April 25, 2013:

i. *Gift certificates, store gift cards, and stored-value cards.* Section 66–29–116 of Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act is preempted to the extent that it permits gift certificates, store gift cards, and stored-value cards, as defined in § 1005.20(a), to be declined at the point-of-sale sooner than the gift certificates, store gift cards, or stored-value cards and their underlying funds are permitted to expire under § 1005.20(e).

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Section 1005.15 Electronic Fund Transfer of Government Benefits

15(c) Pre-Acquisition Disclosure Requirements

1. *Model forms for pre-acquisition disclosures.* Model Form A–10(a) in Appendix A of this part contains a model form for the pre-acquisition short disclosure requirements for government benefit accounts pursuant to § 1005.15(c). Government agencies may use Sample Form A–10(e) of Appendix A to this part to comply with the pre-acquisition long form disclosure requirements of § 1005.15(c)(1).

2. *Disclosing the short and long form before acquisition.* Section 1005.15(c)(1) requires that, before a consumer acquires an account governed by § 1005.15, a government agency must comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in § 1005.18(b). Section 1005.18(b)(1)(i) generally requires delivery of both the short form disclosure required by § 1005.18(b)(2)(i) and the long form disclosure required by § 1005.18(b)(2)(ii) before a consumer acquires a prepaid account. The following example illustrates when a consumer receives disclosures before acquisition of an account for purposes of § 1005.15(c)(1):

i. A government agency informs a consumer that she can receive distribution of benefits via government benefit account in the form of a prepaid card. The consumer receives the short form and long form disclosures to review at the time the consumer receives benefits eligibility information from the agency. After receiving the disclosures, the consumer agrees to receive benefits via the government benefit account. These disclosures were provided to the consumer pre-acquisition, and the agency has complied with § 1005.15(c)(1). By contrast, if the consumer does not receive the short form and long form disclosures to review until the time at which the consumer receives the prepaid card, these disclosures were provided to the consumer post-acquisition, and were not provided in compliance with § 1005.15(c)(1).

3. *Enrollment and disclosures given during the same appointment.* The disclosures and notice required by § 1005.15(c)(1) and (2) may be given in the same process or appointment during which the consumer acquires or agrees to acquire a government benefit account. When a consumer receives benefits eligibility information and signs up or enrolls to receive benefits during the same process or appointment, a government agency that gives the disclosures and notice required by § 1005.15(c)(1) and (2) before issuing a government benefit account complies with the timing requirements of § 1005.15(c).

15(d) Access to Account Information

1. *Access to account information.* For guidance, see comments 18(c)–1 through–5.

15(e) Modified Disclosure Requirements

1. *Modified limitations on liability and error resolution requirements.* For guidance, see comments 18(e)–1 through–3.

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Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

18(a) Coverage

1. *Issuance of access device.* Consistent with § 1005.5(a) and except as provided, as applicable, in § 1005.5(b), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. A consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail store or acquires a prepaid account by making a request or submitting an application by telephone or online.

2. *Application to employers and service providers.* Typically, employers and third-party service providers do not meet the definition of a ''financial institution'' subject to the regulation because they neither hold prepaid accounts (including payroll card accounts) nor issue prepaid cards and agree with consumers to provide EFT services in connection with prepaid accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation.

18(b) Pre-Acquisition Disclosure Requirements

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

1. *Disclosing the short form and long form before acquisition.* Section 1005.18(b)(1)(i) generally requires delivery of both a short form disclosure as described in § 1005.18(b)(2)(i) and a long form disclosure as described in § 1005.18(b)(2)(ii) before a consumer acquires a prepaid account. The following examples illustrate when a consumer receives disclosures before acquisition for purposes of § 1005.18(b)(1)(i):

i. A consumer inquires about obtaining a prepaid account at a branch location of a bank. A consumer then receives printed short form and long form disclosures related to the prepaid account product. After receiving the disclosures, a consumer then agrees to open a prepaid account with the bank. This consumer received the short form and long form pre-acquisition in accordance with § 1005.18(b)(1)(i).

ii. A consumer learns that he or she can receive wages via a payroll card account, at which time a consumer is provided with the short form and long form disclosure to review. A consumer then agrees to receive wages via a payroll card account. These disclosures were provided in compliance with § 1005.18(b)(1)(i). By contrast, if a consumer receives the payroll card or other access device at the end of the first pay period two weeks later, at which time a consumer also receives the short form and long form disclosure to review for the first time, these disclosures were provided to a consumer post-acquisition, and thus not provided in compliance with § 1005.18(b)(1)(i).

2. *Disclosures provided electronically.* When the short form and long form disclosures required under § 1005.18(b)(2)(i) and (ii) are presented after a consumer has initiated a purchase for a prepaid account on a financial institution's Web site, but before a consumer provides any personal identifying information and agrees to accept the prepaid account, such disclosures are made pre-acquisition in accordance with § 1005.18(b)(1)(i). The short form and long form disclosures required by § 1005.18(b)(2)(i) and (ii) that are provided electronically when a consumer acquires a prepaid account on a financial institution's Web site are considered to be given after a consumer acquires a prepaid account if a consumer can easily bypass the disclosures before acquiring the prepaid account. A financial institution can present the short form and long form disclosures on the same Web page to fulfill the requirements of § 1005.18(b)(1)(i). A financial institution could also present the short form disclosure on a Web page and include a hyperlink to the long form disclosure on that same Web page, but, if doing so, a consumer must not have to review any unrelated links before viewing the long form disclosure.

18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Stores

1. *Retail stores.* Section 1005.18(b)(1)(ii) sets forth alternative disclosure requirements for prepaid accounts acquired in retail stores. For purposes of § 1005.18(b)(1)(ii), a retail store is a location where a consumer can obtain a prepaid account in person and that is operated by an entity other than the financial institution or by an agent of the financial institution. A bank or credit union branch is not a retail store. Drug stores and grocery stores at which a consumer can acquire a prepaid account may be retail stores. A retail store that offers one financial institution's prepaid account products exclusively would be considered an agent of the financial institution and, thus, both the short form and the long form disclosure must be provided pre-acquisition pursuant to § 1005.18(b)(1)(i).

2. *Disclosures provided inside prepaid account access device packaging material.* Except when providing the long form disclosure post-acquisition in accordance with the retail store exception set forth in § 1005.18(b)(1)(ii), the short form and long form disclosures required by § 1005.18(b)(2)(i) and (ii) must be provided to a consumer pre-acquisition in compliance with § 1005.18(b)(1)(i). Disclosures are considered to have been provided post-acquisition if they are inside the packaging material accompanying a prepaid account

access device that a consumer cannot see or access before acquiring the prepaid account, or if it is not readily apparent to a consumer that he or she has the ability to access the disclosures inside of the packaging material. For example, if the packaging material is presented in a way that consumers would assume they must purchase the prepaid account before they can open the packaging material, the financial institution would be deemed to have provided disclosures post-acquisition.

3. *Consumers working in retail stores.* A payroll card account offered to and accepted by consumers working in retail stores would not be considered a prepaid account acquired in a retail store for purposes of § 1005.18(b)(1)(ii), and thus, a consumer must receive the short and long form disclosures pre-acquisition pursuant to the timing requirement set forth in § 1005.18(b)(1)(i).

4. *Providing the long form disclosures by telephone in a retail store.* Pursuant to § 1005.18(b)(1)(ii), a financial institution may provide the disclosures described in § 1005.18(b)(2)(ii) after a consumer acquires a prepaid account in a retail store, if the three conditions set forth in § 1005.18(b)(1)(ii)(A) through (C) are met. Pursuant to § 1005.18(b)(1)(ii)(C), a financial institution must make the long form accessible to a consumer by telephone and by a Web site when not providing a printed version of the long form disclosure to a consumer prior to acquisition of a prepaid account. A financial institution could, for example, provide the long form disclosure by telephone using an interactive voice response or similar system or by using a customer service agent.

18(b)(1)(iii) Disclosures for a Prepaid Account Acquired Orally by Telephone

1. *Prepaid accounts acquired by telephone.* Section 1005.18(b)(1)(iii) sets forth requirements for prepaid accounts acquired orally by telephone. For purposes of § 1005.18(b)(1)(iii), a prepaid account is considered to have been acquired orally by telephone when a consumer speaks to a customer service agent or communicates with an automated system, such as an interactive voice response system, to provide personal identifying payment information to acquire a prepaid account. Prepaid accounts acquired using a mobile device without speaking to a customer service agent or communicating with an automated system are not considered to have been acquired orally by telephone.

2. *Disclosures for prepaid accounts acquired by telephone.* Pursuant to § 1005.18(b)(1)(iii), a financial institution must disclose the information required by § 1005.18(b)(2)(i) orally before a consumer acquires a prepaid account orally by telephone. To comply with the pre-acquisition requirement set forth in § 1005.18(b)(1)(i) for prepaid accounts acquired orally by telephone, a financial institution may, for example, read the disclosures required under § 1005.18(b)(2)(i) over the telephone after a consumer has initiated the purchase of a prepaid account by calling the financial institution, but before a consumer agrees to acquire the prepaid account. Although the disclosures required by § 1005.18(b)(2)(ii) are not required to be given pre-acquisition when a consumer acquires a prepaid account orally by telephone, a financial institution must communicate to a consumer that the long form is available upon request, either orally by telephone or on a Web site. In addition, a financial institution must provide information on all fees in the terms and conditions as required by § 1005.7(b)(5), as modified by § 1005.18(f), before the first electronic fund transfer is made from a consumer's prepaid account.

18(b)(2) Content of Disclosures

18(b)(2)(i) Short Form Content Requirements

1. *Disclosures that are inapplicable.* Disclosures required by § 1005.18(b)(2)(i) must always be provided prior to prepaid account acquisition, even when a particular disclosure is not applicable to a specific prepaid account product. For example, if a financial institution does not charge a fee to a consumer for withdrawing money at an automated teller machine in the financial institution's network or an affiliated network, which is a type of fee that is required to be disclosed pursuant to § 1005.18(b)(2)(i)(B)(*3*), the financial institution should list ''ATM withdrawal (in network)'' on the short form disclosure and list ''$0'' as the fee. If, however, the financial institution does not allow a consumer to withdraw money from automated teller machines that are either in the financial institution's network or from those in an affiliated network, the financial institution should still list ''ATM withdrawal (in-network)'' and ''ATM withdrawal (out-of-network)'' on the short form disclosure but instead state ''not offered'' or ''N/A.''

2. *Number of fees disclosed per fee type.* No more than two fees may be disclosed for each fee type required to be listed by § 1005.18(b)(2)(i)(B)(*2*), (*3*), and (*5*) in the short form disclosure. Only one fee may be disclosed for each fee type required to be listed by § 1005.18(b)(2)(i)(B)(*1*), (*4*), (*6*), (*7*) and (*8*), however, § 1005.18(b)(2)(i)(B)(*8*) requires the disclosure of up to three additional fee types. For example, if a financial institution offers more than one method for loading cash into a prepaid account, only the fee for the method that will charge the highest fee should be disclosed, and the financial institution may use an asterisk or other symbol next to the cash reload fee disclosed to indicate that the fee may be lower. *See* comment 18(b)(2)(i)(C)–1.

18(b)(2)(i)(B) Fees and Other Information

18(b)(2)(i)(B)(3) ATM Withdrawal Fees

1. *Foreign ATM withdrawal fees.* Pursuant to § 1005.18(b)(2)(i)(B)(*3*), a financial institution must disclose the fees imposed when a consumer uses an automated teller machine in the United States to initiate a withdrawal of cash, both within and outside of the financial institution's network or a network affiliated with the financial institution, from the prepaid account. If the fee imposed on a consumer for using an automated teller machine in a foreign country to initiate a withdrawal of cash is different from the fee charged for using an automated teller machine in the United States within or outside the financial institution's network or a network affiliated with the financial institution, a financial institution must not disclose the foreign ATM fee pursuant to § 1005.18(b)(2)(i)(B)(*3*), but may be required to do so pursuant to § 1005.18(b)(2)(i)(B)(*8*), as part of the incidence-based fee disclosure.

18(b)(2)(i)(B)(4) Cash Reload Fee

1. *Cash reload fees.* Pursuant to § 1005.18(b)(2)(i)(B)(*4*), a financial institution must disclose a fee imposed when a consumer loads cash into a prepaid account. For example, the cash reload fee would include the cost of adding cash at a point-of-sale terminal, the cost of purchasing an additional card or other device on which cash is loaded and then transferred into a prepaid account, or any other method a consumer may use to load cash into a prepaid account. If the financial institution offers more than one method for a consumer to load cash into the prepaid account, § 1005.18(b)(2)(i)(C) requires that it must only disclose the highest fee on the short form.

18(b)(2)(i)(B)(5) ATM Balance Inquiry Fees

1. *Foreign ATM balance inquiry fees.* Pursuant to § 1005.18(b)(2)(i)(B)(*5*), a financial institution must disclose the two fees imposed when a consumer uses an automated teller machine in the United States to check the balance of a consumer's prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution. If the fee imposed on a consumer for using an automated teller machine in a foreign country to check the balance of a consumer's prepaid account is different from the fee charged for using an automated teller machine within or outside the financial institution's network or a network affiliated with the financial institution in the United States, a financial institution would not disclose the foreign ATM balance inquiry fee pursuant to § 1005.18(b)(2)(i)(B)(*5*), but could do so by § 1005.18 (b)(2)(i)(B)(*8*).

18(b)(2)(i)(B)(7) Inactivity Fee

1. Relationship between inactivity fees and periodic fees. Section 1005.18(b)(2)(i)(B)(*7*) requires disclosure of any fee for non-use or inactivity on a prepaid account as well as the duration of inactivity that triggers a financial institution to impose such an inactivity fee. When disclosing this fee pursuant to § 1005.18(b)(2)(ii)(A) as part of the long form disclosure, a financial institution should specify whether this inactivity fee is imposed in lieu of or in addition to the periodic fee disclosed pursuant to § 1005.18(b)(2)(i)(B)(*1*).

18(b)(2)(i)(B)(8) Incidence-Based Fee Disclosures

18(b)(2)(i)(B)(8)(I) Generally

1. *Incidence-based fee disclosures.* Section 1005.18(b)(2)(i)(B)(*8*) requires the disclosure of up to three fees, other than any of those disclosed pursuant to § 1005.18(b)(2)(i)(B)(*1*) through (*7*), that were incurred most frequently in the prior 12-month period from that prepaid account product. If a prepaid account product only has one, two, or three fees not already disclosed pursuant to § 1005.18(b)(2)(i)(B)(*1*) through (*7*), § 1005.18(b)(2)(i)(B)(*8*) requires disclosure of those fees assuming they were incurred by a

consumer at least once during the prior 12-month period. Conversely, if a prepaid account has four fees not already disclosed pursuant to § 1005.18(b)(2)(i)(B)(*1*) through (*7*), § 1005.18(b)(2)(i)(B)(*8*)(I) requires disclosure of the three fees most frequently incurred. If the disclosures made pursuant to § 1005.18(b)(2)(i)(B)(*1*) through (*7*) capture a prepaid account product's entire fee schedule, a financial institution has no obligation to disclose additional information on the short form pursuant to § 1005.18(b)(2)(i)(B)(*8*)(I).

2. *Determining incidence-based fees.* Section 1005.18(b)(2)(i)(B)(*8*)(I) requires financial institutions at the same time each year, in accordance with the timing requirements of § 1005.18(h), to total the incidence for each type of fee incurred during the prior 12-month period by consumers using a particular prepaid account product. Incidence should be considered on a total basis across all consumers using a particular prepaid account product. For example, if a given consumer incurred one fee type ten times during the prior 12-month period, all ten instances of that individual consumer's paying such a fee must be factored into the total incidence calculation for that fee type. If a financial institution offers more than one prepaid account product, it must consider consumers' fee incidence for each product separately and not consolidate the fee incidence across all of its prepaid account products. The price for purchasing or activating a prepaid account could be an incidence-based fee for purposes of § 1005.18(b)(2)(i)(B)(*8*).

3. *Relationship between incidence-based fee assessment and § 1005.18(h).* Section 1005.18(b)(2)(i)(B)(*8*)(I) requires that a financial institution disclose up to three fees, other than any of the fees disclosed pursuant to § 1005.18(b)(3)(iii)(B)(*1*) through (*7*). Section 1005.18(h)(2) states that after twelve months, all prepaid accounts and related packaging material, access devices, and physical other materials, that are offered, sold, or otherwise made available to consumers in connection with a prepaid account must comply with the requirements of this § 1005.18(b). A financial institution must therefore make its first incidence-based fee assessment in time to ensure that all prepaid accounts and related packaging material, access devices, and physical other materials, that are offered, sold, or otherwise made available to consumers in connection with a prepaid account include the incidence-based disclosure within 12 months in accordance with § 1005.18(h)(2). Section 1005.18(h)(1), however, states that within nine months any newly-created disclosures would have to comply with the disclosure requirements in § 1005.18(b)(2). Thus, if a financial institution creates new disclosures within nine months of the effective date, those disclosures would need to include the appropriate incidence-based fee disclosure in accordance with 1005.18(h)(1).

4. *Multiple service plan prepaid account products.* When disclosing multiple service plans on a short form disclosure as permitted by § 1005.18(b)(3)(iii)(B)(*1*), a financial institution must consider the frequency with which fees are incurred from all of those plans as a whole to determine which three additional fees to disclose pursuant to § 1005.18(b)(2)(i)(B)(*8*)(I). If, however, the financial institution is disclosing the fee schedule for only the service plan in which a consumer is enrolled by default upon acquiring the prepaid account, it would consider the fee incidence for that service plan. *See* comment 18(b)(3)(iii)(B)–1 for guidance on what constitutes multiple service plans.

5. *Updating disclosures for retail store packaging.* For prepaid accounts sold in retail stores, § 1005.18(b)(2)(i)(B)(*8*)(I) permits a financial institution to implement any necessary updates to the incidence-based fee disclosures at the time the institution prints new prepaid account packaging materials. Section 1005.18(b)(2)(i)(B)(*8*)(I) does not require that financial institutions immediately destroy existing inventory in retail stores or elsewhere in the distribution channel, to the extent the disclosures on such packaging materials are otherwise accurate, to comply with this requirement. For example, if a financial institution determines that an incidence-based fee listed on a short form disclosure in a retail store is no longer one of the most commonly incurred fees and makes the appropriate change when printing new disclosures, any packages in retail stores that contain the previous incidence-based fee disclosure may still be sold and comply with § 1005.18(b)(2)(i)(B)(*8*)(I).

18(b)(2)(i)(B)(8)(II) New Prepaid Account Products

1. *New prepaid account products.* If a particular prepaid account product was not offered by the financial institution during the prior 12-month period, § 1005.18(b)(2)(i)(B)(*8*)(II) requires the financial institution to disclose up to three fees other than any of those fees disclosed pursuant to § 1005.18(b)(2)(i)(B)(*1*) through (*7*) that it reasonably anticipates will be incurred by consumers most frequently during the next 12-month period. The financial institution should use available data to reasonably anticipate what fees should be disclosed. For example, if a financial institution changes the name of its prepaid account product and develops a new marketing and distribution plan but does not alter the prepaid account's fee schedule, this would be considered a new prepaid account product for purposes of § 1005.18(b)(2)(i)(B)(*8*)(II). Insofar as the fee schedule remains unchanged, however, and the financial institution reasonably anticipates that the fees it previously disclosed pursuant to § 1005.18(b)(2)(i)(B)(*8*)(I) would remain unchanged, the financial institution should continue to disclose those fees for an additional 12-month period. *See* comment 18(b)(2)(i)(B)(*8*)(I)–1 for guidance on how to determine which three fees to disclose.

18(b)(2)(i)(B)(8)(III) Revised Prepaid Account Products

1. *Revised prepaid account products.* Section 1005.18(b)(2)(i)(B)(*8*)(III) requires that if the financial institution changes an existing prepaid account product's fee schedule at any point after assessing its incidence-based fee disclosure for the prior 12-month period pursuant to § 1005.18(b)(2)(i)(B)(*8*)(I), it must determine whether, after making such changes, it reasonably anticipates that the existing incidence-based fee disclosure will represent the most commonly incurred fees for the remainder of the 12-month period. For example, if a financial institution changes its card replacement fee from $3.00 to $4.00 in May after already assessing in January whether the incidence-based fees need to be updated for the current 12-month period, this change in the fee schedule would subject the prepaid account product to § 1005.18(b)(2)(i)(B)(*8*)(III). In this example, the financial institution would assess whether it reasonably anticipates that the existing incidence-based fee disclosure still lists what will be the most commonly incurred fees from May until the following January when the financial institution conducts its next, annual incidence-based fees assessment.

18(b)(2)(i)(B)(9) Overdraft Services and Other Credit Features

1. *Short form overdraft disclosure.* Section 1005.18(b)(2)(i)(B)(*9*) requires disclosure of a statement that credit-related fees may apply if, at any point, a credit plan may be offered in connection with the prepaid account. This statement would have to be provided on all short form disclosures, regardless of whether some consumers may never be solicited to enroll in such a plan, if such a plan could be offered.

18(b)(2)(i)(B)(10) Statement Regarding Other Fees

1. *Statement regarding other fees.* Section 1005.18(b)(2)(i)(B)(*10*) requires a financial institution to include a statement on the short form disclosing the number of fees, other than those listed on the short form § 1005.18(b)(2)(i)(B)(*1*) through (*8*), listed in the long form disclosure pursuant to § 1005.18(b)(2)(ii)(A). The following examples illustrate this concept:

i. A financial institution charges a fee for issuing a consumer a replacement card, but this fee is not among the top three fees its consumers incurred most frequently during the prior 12-month period and therefore would not be disclosed pursuant to § 1005.18(b)(2)(i)(B)(*8*). This is the only fee the financial institution imposes that is not required to be disclosed elsewhere on the short form disclosure. The financial institution would include a statement on the short form disclosure that it may charge one other fee not otherwise listed, in a form substantially similar to the clause set forth in appendix A–10(a) of this part.

ii. A financial institution does not charge any fees other than those required to be disclosed pursuant to § 1005.18(b)(2)(i)(B)(*1*) through (*8*). The financial institution may, but is not required to, include a statement on the short form disclosure that it does not charge any other fees not listed on the short form disclosure.

2. *Counting the number of other fees.* If the fee a financial institution imposes might vary, even if the variation is based on a consumer's choice of how to utilize a particular service, the financial institution must count each variation of the fee that

might be imposed as a separate fee. For example, if a financial institution imposes one fee to issue a replacement card to a consumer using a standard mail service, but charges a different (and perhaps higher) fee if a consumer requests expedited delivery of the replacement card, and neither of these fees are incurred frequently enough to be disclosed as an incidence-based fee pursuant to § 1005.18(b)(2)(i)(B)(*8*), then the financial institution would still count each of these fees separately when determining the total number of fees to disclose pursuant to § 1005.18(b)(2)(i)(B)(*10*). Even if a fee could be waived under certain conditions, it would still be counted in order to comply with § 1005.18(b)(2)(i)(B)(*10*).

18(b)(2)(i)(B)(11) Telephone Number and Web site

1. *Financial institution's telephone number.* A financial institution must make the long form disclosure described in § 1005.18(b)(2)(ii) accessible to a consumer orally via a telephone number disclosed pursuant to § 1005.18(b)(2)(i)(B)(*11*) when a financial institution chooses not to provide a written form of those disclosures before a consumer acquires a prepaid account, as described in § 1005.18(b)(1)(ii). For example, a financial institution could use a customer service agent, or an interactive voice response system, to provide this disclosure. A consumer must not incur a fee to call this telephone number before acquiring a prepaid account. The telephone number disclosed pursuant to § 1005.18(b)(2)(i)(B)(*11*) could be the same as the customer service number for which a financial institution may impose a fee on a consumer to use for other purposes, but a consumer could not incur any customer service or other transaction fees when calling this number to access the information set forth in § 1005.18(b)(2)(ii) before acquiring a prepaid account in a retail store.

2. *Financial institution's Web site.* Section 1005.18(b)(2)(i)(B)(*11*) requires disclosure of a unique URL that must take consumers to the Web page where disclosures described in § 1005.18(b)(2)(ii) may be viewed when a financial institution chooses not to provide a written form of those disclosures before a consumer acquires a prepaid account, as described in § 1005.18(b)(1)(ii). An entered URL that requires a consumer to navigate various other Web pages before viewing the long form disclosure would not comply with § 1005.18(b)(2)(i)(B)(*11*).

18(b)(2)(i)(C) Disclosing Variable Fees

1. *Disclosing variable fees in the short form.* Section 1005.18(b)(2)(i)(C) requires a financial institution to disclose the highest fee it could impose upon a consumer for each of the fee types listed on the short form pursuant to § 1005.18(b)(2)(i)(B)(*1*), along with a symbol, such as an asterisk, to indicate that a lower fee might apply, and text explaining that the fee may be lower, if applicable. For example, if a financial institution charges a monthly fee of $4.95, but the financial institution waives this fee if a consumer receives direct deposit payments into the prepaid account, the financial institution would list a monthly fee of $4.95 on the short form disclosure with an asterisk (or other symbol) next to the dollar amount that refers to a statement that the fee may be lower. If a financial institution charges a cash reload fee of $3.95 at reload networks that are not agents of the financial institution, but waives this fee if a consumer loads money at a point-of-sale terminal operated by a retailer that is an agent of the financial institution, the financial institution would disclose a cash reload fee of $3.95 on the short form disclosure pursuant to § 1005.18(b)(2)(i)(C) with an asterisk (or other symbol) next to the dollar amount that refers to the same statement that the fee maybe lower. Section 1005.18(b)(2)(i)(C) does not permit a financial institution to explain the conditions under which fee may be lower, but a financial institution could use any other part of the prepaid account product's packaging material or may use its Web site to disclose that information. That information is also required to be disclosed in the long form pursuant to § 1005.18(b)(2)(ii)(A).

2. *Third party fees.* Section 1005.18(b)(2)(i)(C) states that a financial institution must not disclose any additional third party fees imposed in connection with any of the fees disclosed pursuant to § 1005.18(b)(2)(i)(B)(*1*) through (*7*). Third parties could include service providers and other entities, regardless of whether the entity is an agent of the financial institution.

18(b)(2)(ii) Long Form Content Requirements

18(b)(2)(ii)(A) Fees

1. *Fee disclosure.* Section 1005.18(b)(2)(ii)(A) requires a financial institution to disclose every fee that may be imposed on a consumer and the conditions, if any, under which the fee may be imposed, waived, or reduced. For example, if a financial institution charges a cash reload fee, the financial institution must list the amount of the cash reload fee and also specify any circumstances under which a consumer can qualify for a lower fee. Relevant conditions to disclose could also include, for example, if there is a limit on the amount of cash a consumer may load into the prepaid account in a transaction or during a particular time period. Section 1005.18(b)(2)(ii)(A) also explains that a financial institution must not utilize any symbols to explain conditions under which any fee may be imposed.

2. *Disclosing a service or feature without a charge.* A financial institution may, at its option, choose to disclose pursuant to § 1005.18(b)(2)(ii)(A), any service or feature it provides or offers even if it does not charge a fee for that service or feature. For example, a financial institution may choose to list ''online bill pay service'' and indicate that the fee is ''$0'' or ''free'' when the financial institution does not charge consumers a fee for that service or feature. By contrast, where a service or feature is available without a fee for an introductory period, but where a fee may be imposed at the conclusion of the introductory period for that service or feature, the financial institution could not indicate that the fee is ''$0.'' The financial institution should instead list the main fee and explain in the separate explanatory column how the fee could be lower during the introductory period, what that alterative fee would be, and when it will be imposed. Similarly, if a consumer must enroll in an additional service to avoid incurring a fee for another service, neither of those services should disclose a fee of ''$0,'' but should instead list each fee amount imposed if a consumer does not enroll. For example, if the monthly fee is waived once a consumer receives direct deposit payments into the prepaid account, the monthly fee imposed upon a consumer if they do not receive direct deposit would be disclosed in the long form, and an explanation regarding how receiving direct deposit might lower the fee should be included in the explanatory column in the long form.

3. *Third party fees.* Section 1005.18(b)(2)(ii)(A) generally requires disclosure, to the extent known, of any third party fee amounts that may apply. For example, a financial institution that offers balance updates to a consumer via text message would disclose that mobile carrier data charges may apply for each text message a consumer receives. Section 1005.18(b)(2)(ii)(A) also requires that a financial institution must always disclose in the long form any fees imposed by a third party who is acting as an agent of the financial institution for purposes of the prepaid account product. For example, any fees that the provider of a cash reload service who has a relationship with the financial institution may impose would be disclosed in the long form.

18(b)(2)(ii)(B) Overdraft Services and Other Credit Features

1. *Long form disclosure of overdraft services and other credit features.* Section 1005.18(b)(2)(ii)(B) requires that if, at any point, a credit plan may be offered in connection with the prepaid account, the disclosures described in Regulation Z, 12 CFR 1026.60(a), (b), and (c) must be provided. These disclosures must appear in the form required under 12 CFR 1026.60(a), (b), and (c), and, to the extent possible, on the same printed page or Web page as the rest of the information required to be listed pursuant to § 1005.18(b)(2)(ii).

18(b)(3) Form of Pre-Acquisition Disclosures

18(b)(3)(i) General

18(b)(3)(i)(B) Electronic Disclosures

1. *Disclosing short forms and long forms electronically.* Section 1005.18(b)(3)(i)(B) generally requires electronic delivery of the short form and long form disclosures required by § 1005.18(b)(2)(i) and (ii) when a consumer acquires a prepaid account through the Internet, including via a mobile application. A financial institution may, at its option, provide the short form and long form disclosures on the same Web page or two different Web pages as long as the disclosures are provided in accordance with the pre-acquisition disclosure requirements of § 1005.18(b)(1)(i).

2. *No requirement of E-Sign consent.* Section 1005.18(b)(3)(i)(B) allows financial institutions to provide disclosures electronically without regard to a consumer consent and other applicable provisions of the E-Sign Act, but specifies that disclosures must be provided electronically in a manner

which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. For example, if a consumer is acquiring the prepaid account using a financial institution's Web site, it would be reasonable to expect that a consumer would be able to access pre-acquisition disclosures provided on a similar Web site.

3. *Machine-readable text.* Section 1005.18(b)(3)(i)(B) requires that disclosures provided to a consumer through a Web site where required by paragraph (b)(1)(ii)(C) and as described in § 1005.18(b)(2)(i)(B)(*11*) must be made in an electronic form using a machine-readable text format that is accessible via both Web browsers and screen readers. A disclosure would not comply with this requirement if it was not provided in a textual format that can be read automatically by Internet search engines or other computer systems.

18(b)(3)(ii) Retainable Form

1. *Retainable electronic disclosures.* Section 1005.18(b)(3)(ii) generally requires that, except for disclosures provided to a consumer through the telephone number described in § 1005.18(b)(2)(i)(B)(*11*) or disclosures provided orally pursuant to § 1005.18(b)(1)(iii) disclosures provided to consumers pursuant to § 1005.18(b)(2)(i) and (b)(2)(ii) be retainable. A financial institution may satisfy the requirement to provide electronic disclosures in a retainable form if it provides disclosures on its Web site in a format that is capable of being printed, saved or emailed to a consumer.

18(b)(3)(iii) Tabular Format

18(b)(3)(iii)(B) Disclosures for Prepaid Account Products Offering Multiple Service Plans

1. *Multiple service plans.* The multiple service plan disclosure provisions in § 1005.18(b)(3)(iii)(B) apply when a financial institution offers more than one service plan for a particular prepaid account product, and each plan has a different fee schedule. For example, a financial institution might offer a prepaid account product with one service plan where a consumer pays no periodic fee but instead pays a fee for each transaction, and another plan that includes a monthly fee but no per transaction fee. A financial institution may also offer a prepaid account product with one service plan for consumers who utilize another one of the financial institution's non-prepaid services (*e.g.,* a mobile phone service) and a different plan for consumers who only utilize a financial institution's prepaid account products. Each of these plans would be considered a ''service plan'' for purposes of § 1005.18(b)(3)(iii)(B).

18(b)(6) Prepaid Accounts Acquired in a Foreign Language

1. *Principally using a foreign language.* Section 1005.18(b)(6) requires that if a financial institution principally uses a foreign language on a packaging material, by telephone, in person, or on the Web site a consumer utilizes to acquire a prepaid account, then disclosures made pursuant to § 1005.18(b)(2)(i) of this section or § 1005.18(b)(2)(ii) of this section must be provided in that same foreign language. For example, if a financial institution uses mostly Spanish on the packaging material of a prepaid account sold in a retail store, even though a few words appear in English, then the short form and long form disclosure provided to a consumer must also be in Spanish. Similarly, if the homepage of the Web site a consumer visits to acquire a prepaid account is mostly in Spanish, the short form and long form disclosure a consumer receives pre-acquisition must also be in Spanish. A consumer who calls a telephone number to acquire a prepaid account and either speaks to a customer service agent in Spanish or interacts with an IVR system in Spanish must also receive the short form and long form disclosure information in Spanish, in accordance with § 1005.18(b)(2)(ii). Also, if a consumer speaks with a customer service agent in a foreign language in a bank branch or credit union location, this would be considered ''in person,'' and a consumer must receive the short form disclosure and the long form disclosure information in that foreign language to comply with § 1005.18(b)(6).

18(b)(7) Disclosures on a Prepaid Account Access Device

1. *Web site and telephone number.* Section 1005.18(b)(7) requires that the name of a financial institution and the URL of a Web site and a telephone number that a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. For example, a consumer might use this information to contact a financial institution with a question about a prepaid account's terms and conditions, or to report when an unauthorized transaction has occurred involving a prepaid account.

18(c) Access to Prepaid Account Information

1. *Posted transactions.* A history of transactions provided under § 1005.18(c)(1)(ii) and (iii) shall reflect transfers once they have been posted to the account. Thus, an institution does not need to include transactions that have been authorized but that have not yet posted to the account.

2. *Electronic history.* The electronic history required under § 1005.18(c)(1)(ii) must be provided in a form that the consumer may keep, as required under § 1005.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, an institution satisfies the requirement if it provides a history at a Web site in a format that is capable of being printed or stored electronically using a web browser.

3. *Access to account information.* Section 1005.18(c)(1) permits a financial institution, instead of furnishing periodic statements under § 1005.9(b), to make available to the consumer the consumer's account balance by telephone, an electronic history of the consumer's account transactions that covers at least 18 months preceding the date the consumer electronically accesses the account, and a written history of the consumer's account transactions upon the consumer's oral or written request that covers at least 18 months preceding the date the institution receives the consumer's request. Requests that exceed the requirements of § 1005.18(c)(1) for providing account information, for which a financial institution may charge a fee, include the following:

i. A financial institution may assess a fee or charge to a consumer for responding to subsequent requests for written account information made in a single calendar month. For example, if a consumer makes a request for 18 months of written account transaction history on June 1 and makes a request for 18 months of written history on August 5, the financial institution may not assess a fee or charge to the consumer for responding to either request. However, if the consumer requests 18 months of written history on June 1 and then makes the same request on June 15, the financial institution may assess a fee or charge to the consumer for responding to the request made on June 15, as this is the second request in the same month.

ii. If a financial institution maintains more than 18 months of account transaction history, it may assess a fee or charge to the consumer for providing a written history of the consumer's account information for transactions occurring more than 18 months prior to the date the institution receives the consumer's request, provided the consumer specifically requests the account transaction history for that time period.

iii. If a financial institution offers a consumer the ability to request automatic mailings of written history on a monthly or other periodic basis, it may, at its option, assess a fee or charge for such automatic mailings but not for account history requested pursuant to § 1005.18(c)(1)(iii). *See* comment 18(c)–4.

4. *18 months of account information.* Section 1005.18(c)(1)(ii) requires a financial institution to make available at least 18 months of account transaction information electronically, and § 1005.18(c)(1)(iii) requires the financial institution to provide that information in writing upon the consumer's request. A financial institution may provide fewer than 18 months of written account transaction history if the consumer requests a shorter period of time. If a prepaid account has been open for fewer than 18 months, the financial institution need only provide account information pursuant to § 1005.18(c)(1)(ii) and (iii) since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution must continue to provide at least 18 months of account transaction information from the date the request is received. *See* comment 9(b)–3. When a prepaid account has been closed or inactive for 18 months, the financial institution is no longer required to make available any account or transaction information.

5. *Summary totals of amount of fees, deposits, and debits.* Section 1005.18(c)(4) requires a financial institution to disclose a summary total of the amount of all fees assessed against a prepaid account, the total amount of all deposits to the account, and the total amount of all debits from the account, for the prior calendar month and for the calendar year to date. The calendar month and annual fees, deposits, and debits

information must be disclosed on any periodic statement provided pursuant to § 1005.9(b), in any electronic history of account transactions whether provided pursuant to § 1005.18(c)(1)(ii) or otherwise, and on any written history of account transactions provided pursuant to § 1005.18(c)(1)(iii). If a financial institution provides periodic statements pursuant to § 1005.9(b), total fees, deposits, and debits may be disclosed for each statement period rather than each calendar month, if different. The fees that must be included in the summary total include those that are required to be disclosed pursuant to § 1005.18(b)(2)(ii)(A). For example, an institution must include the fee it charges a consumer for using an out-of-network ATM in the summary total of fees, but it need not include any fee charged by an ATM operator with whom the institution has no relationship for the consumer's use of that operator's ATM. The summary total of fees should be net of any fee reversals. The total amount of all debits from the account should be exclusive of fees assessed against the account. The total deposits and total debits must include all deposits to and debits from the prepaid account, not just those deposits and debits that are the result of electronic fund transfers.

18(e) Modified Limitations on Liability and Error Resolution Requirements

1. *Error resolution safe harbor provision.* Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period required by the regulation (as set forth in the model clause in paragraph (b) of appendix A–7 of this part). Specifically, an institution may disclose to prepaid account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an institution's summary of the consumer's liability (as required under § 1005.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error.

2. *Electronic access.* A consumer is deemed to have accessed a prepaid account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity and to provide access to a Web site or mobile application through which account information can be viewed. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under §§ 1005.6 and 1005.11. A consumer is not deemed to have accessed a prepaid account electronically when the consumer receives an automated text message or other automated account alert, or checks the account balance by telephone.

3. *Untimely notice of error.* An institution that provides a transaction history under § 1005.18(c)(1) is not required to comply with the requirements of § 1005.11 for any notice of error from the consumer pertaining to a transfer that occurred more than 60 days prior to the earlier of the date the consumer electronically accesses the account or the date the financial institution sends a written history upon the consumer's request. (Alternatively, as provided in § 1005.18(e)(2)(ii), an institution need not comply with the requirements of § 1005.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with § 1005.6 (including the extension of time limits in § 1005.6(b)(4)) before it may impose any liability on the consumer.

4. *Limitations on liability and error resolution for unverified accounts.* Section 1005.18(e)(3) provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, if a financial institution discloses to the consumer the risks of not registering a prepaid account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A–7 of this part, a financial institution is not required to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account with respect to which it has not completed its collection of consumer identifying information and identity verification. Consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number. Section 1005.18(e)(3) also provides that once a consumer's identity has been verified, a financial institution must limit the consumer's liability for unauthorized transactions and resolve any errors that occurred prior to verification that satisfy the timing requirements of §§ 1005.6 or 1005.11, or the modified timing requirements in § 1005.18(e), as applicable. For an unauthorized transfer or an error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or alleged error is based on the date the consumer contacts the financial institution to report the unauthorized transfer or alleged error, not the date the financial institution completes its customer identification and verification process. For an error asserted on a previously unverified prepaid account, the time limits for a financial institution's investigation of errors pursuant to § 1005.11(c) begin on the day following the date the financial institution completed its customer identification and verification process. A financial institution may not delay completing its customer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error.

18(g) Credit Card Plans Linked to Prepaid Accounts

1. *Credit card plan subject to Regulation Z.* Regulation Z (12 CFR 1026.2(a)(20), comment 2(a)(20)–2.ii) provides guidance on whether a program constitutes a credit plan. Regulation Z (12 CFR 1026.15(a)(i), comment 2(a)(15)–2.i.F provides guidance on when an access device for a prepaid account is a credit card, and comment 2(a)(15)–2.i.G provides guidance on when an account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

2. *Variation in account term or conditions.* i. Under § 1005.18(g)(2), a financial institution may offer different terms on different prepaid account products, where the terms may differ between a prepaid account product where a credit card plan subject to Regulation Z cannot be linked to the prepaid account, and a prepaid account product where a credit card plan subject to Regulation Z can be linked to the prepaid account. However, if with respect to a prepaid account a credit card plan subject to Regulation Z may be offered at any point to the consumer and the plan is accessed by an access device for the prepaid account where the access device is a credit card under Regulation Z or is accessed by account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a financial institution that establishes or holds such a prepaid account may not apply different terms and conditions that do not relate to an extension of credit, carrying a credit balance, or credit availability to a consumer's account, depending on whether the consumer elects to link such a credit card plan to the prepaid account. In addition, § 1005.18(g)(2) prevents a financial institution from waiving fees or reducing the amount of fees that do not relate to an extension of credit, carrying a credit balance, or credit availability if the consumer elects to link the prepaid account to a credit card plan.

ii. Account terms and conditions subject to § 1005.18(g)(2) include, but are not limited to:

A. Interest paid on funds deposited into the prepaid account, if any;

B. Fees assessed on the prepaid account that do not relate to an extension of credit, carrying a credit balance, or credit availability, including any one-time or periodic fees imposed for opening or holding a prepaid account. *See* Regulation Z § 1026.4(b)(2), comment 4(b)(2)–1.iii and .iv for guidance on fees that relate to an extension of credit, carrying a credit balance, or credit availability;

C. The type of prepaid access card provided to the consumer. For instance, an institution may not provide to consumers a PIN-only card before a credit plan subject to Regulation Z is linked to the prepaid account, while providing a prepaid card with both PIN and signature-debit functionality to

consumers who have elected to link such a credit plan to the prepaid account;

D. Minimum balance requirements; or

E. Account features such as online bill payment services.

iii. Account terms and conditions that relate to an extension of credit, carrying a credit balance, or credit availability and thus are not subject to § 1005.18(g)(2) include:

A. Fees or charges assessed on the prepaid account applicable to transactions that access the credit card plan subject to Regulation Z (12 CFR part 1026), including transactions that access both the prepaid account and the credit card plan;

B. Annual or other periodic fees assessed on the prepaid account imposed for the issuance or availability of the credit card plan subject to Regulation Z (12 CFR part 1026);

C. Any non-periodic fees that relate to the opening of the credit card plan subject to Regulation Z (12 CFR part 1026); or

D. Other fees described in Regulation Z § 1026.4(b)(2), comment 4(b)(2)–1.iii.

iv. *Examples.* For all the examples below, assume that a consumer has selected a prepaid account where a credit card plan subject to Regulation Z may be offered to the consumer and the credit plan will be accessed by an access device for the prepaid account where the access device is a credit card under Regulation Z or will be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

A. Assume also that the consumer uses the access device to make a purchase that only accesses the prepaid account and does not access a credit card plan. A financial institution is prohibited by § 1005.18(g)(2) from charging a $2.00 fee for that transaction if the consumer has not elected to link the prepaid account to the credit card plan, and charging a $1.00 fee for that transaction where the consumer has made such an election.

B. Assume instead the consumer has elected to link the prepaid account to the credit card plan, and the consumer makes a purchase transaction at point of sale where the transaction using the access device is either entirely funded from the credit card plan, or partially funded from the credit card plan. A financial institution is not prevented by § 1005.18(g)(2) from charging a different amount of fee for that type of transaction than would be charged for a transaction that is funded solely from the prepaid account. For example, a financial institution is not prevented by § 1005.18(g)(2) from charging a $2.00 fee for that transaction, notwithstanding that only a $1.00 fee would have applied if the transaction was solely funded from the prepaid account.

C. Assume a financial institution charges a $10 annual fee for holding the prepaid account. Section 1005.18(g)(2) prevents a financial institution from charging a different monthly fee for holding the prepaid account if the consumer elects to link the prepaid account to the credit card plan. For example, the financial institution may not waive or discount the annual fee for holding the prepaid account, if the consumer elects to link the prepaid account to the credit card plan. Section 1005.18(g)(2), however, does not prevent the institution from charging an additional fee to open the credit card plan or for the availability of the credit card plan.

Section 1005.19 Internet Posting of Prepaid Account Agreements

19(a) Definitions

19(a)(1) Agreement

1. *Provisions contained in separate documents included.* Section 1005.19(a)(1) defines a prepaid account agreement, for purposes of § 1005.19, as the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. An agreement may consist of several documents that, taken together, define the legal obligation between the issuer and consumer.

19(a)(2) Amends

1. *Substantive changes.* A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 1005.19(a)(2) provides that any change in the fee information, as defined in § 1005.19(a)(3), is deemed to be substantive. Examples of other changes that generally would be considered substantive include:

i. Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement.

ii. Addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee.

iii. Changes that may affect the cost of the prepaid account to the consumer, such as changes in a provision describing how the prepaid account's monthly fee will be calculated.

iv. Changes that may affect how the terms of the agreement are construed or applied, such as changes to a choice-of-law provision.

v. Changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

2. *Non-substantive changes.* Changes that generally would not be considered substantive include, for example:

i. Correction of typographical errors that do not affect the meaning of any terms of the agreement.

ii. Changes to the issuer's corporate name, logo, or tagline.

iii. Changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins.

iv. Changes to the name of the prepaid account to which the program applies.

v. Reordering sections of the agreement without affecting the meaning of any terms of the agreement.

vi. Adding, removing, or modifying a table of contents or index.

vii. Changes to titles, headings, section numbers, or captions.

19(a)(4) Issuer

1. *Issuer.* Section 1005.19(a)(4) provides that, for purposes of § 1005.19, issuer or prepaid account issuer means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement. For example, Bank X and Bank Y work together to issue prepaid accounts. A consumer that obtains a prepaid account issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states ''This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Prepaid Account.'' The prepaid account issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the prepaid account through a link on Bank Y's Web site and the cards prominently feature the Bank Y logo on the front of the card.

2. *Use of third-party service providers.* An issuer has a legal obligation to comply with the requirements of § 1005.19. However, an issuer generally may use a third-party service provider to satisfy its obligations under § 1005.19, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the entity with which it partners to issue prepaid accounts to fulfill the requirements of § 1005.19 on the issuer's behalf. For example, Program Manager and Bank work together to issue prepaid accounts. Under the § 1005.19(a)(4) definition, Bank is the prepaid account issuer for purposes of § 1005.19. However, Program Manager services the prepaid accounts, including mailing to consumers account opening materials and providing electronic history of consumers' account transactions pursuant to § 1005.18(c)(1)(ii). While Bank is responsible for ensuring compliance with § 1005.19, Bank may arrange for Program Manager (or another appropriate third-party service provider) to submit prepaid account agreements to the Bureau under § 1005.19 on Bank's behalf. Bank must comply with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.

3. *Partner institution Web sites.* As explained in comment 19(c)–2, if an issuer provides consumers with access to specific information about their individual accounts, such as providing electronic history of consumers' account transactions pursuant to § 1005.18(c)(1)(ii), through a third-party Web site, the issuer is deemed to maintain that Web site for purposes of § 1005.19. Such a Web site is deemed to be maintained by the issuer for purposes of § 1005.19 even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out

to the public as belonging to the issuer. A partner institution's Web site is an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of § 1005.19. For example, Program Manager and Bank work together to issue prepaid accounts. Under the § 1005.19(a)(4) definition, Bank is the issuer that issues these prepaid accounts for purposes of § 1005.19. Bank does not maintain a Web site specifically related to prepaid accounts. However, consumers can access information about their individual accounts, such as an electronic history of consumers' account transactions, through a Web site maintained by Program Manager. Program Manager designs the Web site and owns and maintains the information technology infrastructure that supports the Web site. The Web site is branded and held out to the public as belonging to Program Manager. Because consumers can access information about their individual accounts through this Web site, the Web site is deemed to be maintained by Bank for purposes of § 1005.19. Bank therefore may comply with § 1005.19(c) or (d)(1) by ensuring that agreements offered to the public are posted on Program Manager's Web site in accordance with § 1005.19(c) or (d)(1), respectively. Bank need not create and maintain a Web site branded and held out to the public as belonging to Bank in order to comply with § 1005.19(c) and (d) as long as Bank ensures that Program Manager's Web site complies with these sections.

19(a)(5) Offers

1. *Prepaid accounts offered to limited groups.* An issuer is deemed to offer a prepaid account agreement to the public even if the issuer solicits applications for or otherwise makes available prepaid accounts only to a limited group of persons. For example, an issuer may market affinity cards only to students and alumni of a particular educational institution, or may solicit only residents of a specific geographic location for a particular prepaid account; in these cases, the agreement would be considered to be offered to the public. Similarly, agreements for prepaid accounts issued by a credit union are considered to be offered to the public even though such prepaid accounts are available only to credit union members. Agreements for payroll card accounts, government benefit accounts, or for prepaid accounts used to distribute student financial aid disbursements, or property and casualty insurance payouts, and other similar programs are also considered to be offered to the public.

19(a)(6) Open Account

1. *Open account.* The definition of open account includes a prepaid account if (i) there is an outstanding balance in the account; (ii) the consumer can load more funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit through a credit plan that would be a credit card account under Regulation Z, 12 CFR 1026, that is offered in connection with a prepaid account. Under this definition, an account that meets either of these criteria is considered to be open even if the account is considered inactive by the issuer.

19(a)(7) Prepaid Account

1. *Prepaid account.* Section 1005.19(a)(7) provides that, for purposes of § 1005.19, the term prepaid account means a prepaid account as defined in § 1005.2(b)(3). Therefore, for purposes of § 1005.19, a prepaid account includes, among other things, a payroll card account as defined in § 1005.2(b)(3)(iii) and an account established by a government agency for distributing government benefits to a consumer electronically as defined in § 1005.2(b)(3)(iv) and § 1005.15(a)(2).

19(b) Submission of Agreements to the Bureau

19(b)(1) Quarterly Submissions

1. *Quarterly submission requirement.* Section 1005.19(b)(1) requires issuers to send quarterly submissions to the Bureau no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. For additional guidance as to the quarterly submission timing requirement, see Regulation Z (12 CFR 1026.58) comment 58(c)(1)–1.

2. *No quarterly submission required.* i. Under § 1005.19(b)(1), an issuer is not required to make any submission to the Bureau at a particular quarterly submission deadline if, during the previous calendar quarter, the issuer did not take any of the following actions:

A. Offering a new prepaid account agreement that was not submitted to the Bureau previously.

B. Amending an agreement previously submitted to the Bureau.

C. Ceasing to offer an agreement previously submitted to the Bureau.

ii. For additional guidance as to when a quarterly submission is not required, see Regulation Z (12 CFR 1026.58) comment 58(c)(1)–2.ii.

3. *Quarterly submission of complete set of updated agreements.* Section 1005.19(b)(1) permits an issuer to submit to the Bureau on a quarterly basis a complete, updated set of the prepaid account agreements the issuer offers to the public. For additional guidance regarding quarterly submission of a complete set of updated agreements, see Regulation Z (12 CFR 1026.58) comment 58(c)(1)–3.

19(b)(2) Amended Agreements

1. *No requirement to resubmit agreements not amended.* Under § 1005.19(b)(2), if a prepaid account agreement has been submitted to the Bureau, the agreement has not been amended, and the issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. For additional guidance regarding the lack of a requirement to resubmit agreements that have not been amended, see Regulation Z (12 CFR 1026.58) comment 58(c)(3)–1.

2. *Submission of amended agreements.* If an issuer amends a prepaid account agreement previously submitted to the Bureau, § 1005.19(b)(2) requires the issuer to submit the entire amended agreement to the Bureau. The issuer must submit the amended agreement to the Bureau by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. However, the issuer is required to submit the amended agreement to the Bureau only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective. *See* comment 19(b)(2)–3. For additional guidance on the submission of amended agreements, see Regulation Z (12 CFR 1026.58) comment 58(c)(3)–2.

3. *Agreements amended but no longer offered to the public.* An issuer should submit an amended agreement to the Bureau under § 1005.19(b)(2) only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the amendment became effective. Agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Bureau. For additional guidance on agreements that have been amended but are no longer offered to the public, see Regulation Z (12 CFR 1026.58) comment 58(c)(3)–3.

4. *Change-in-terms notices not permissible.* Section 1005.19(b)(2) requires that if an agreement previously submitted to the Bureau is amended, the issuer must submit the entire revised agreement to the Bureau. An issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments must be integrated into the text of the agreement (or the optional addendum described in § 1005.19(b)(6)), not provided as separate riders. For additional guidance as to submission of revised agreements, see Regulation Z (12 CFR 1026.58) comment 58(c)(3)–4.

19(b)(3) Withdrawal of Agreements

1. *Notice of withdrawal of agreement.* Section 1005.19(b)(3) requires an issuer to notify the Bureau if any agreement previously submitted to the Bureau by that issuer is no longer offered to the public by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. For additional guidance as to notice of withdrawal of agreements, see Regulation Z (12 CFR 1026.58) comment 58(c)(4)–1.

19(b)(4) De Minimis Exception

1. *Relationship to other exceptions.* The de minimis exception in § 1005.19(b)(4) is distinct from the product testing exception under § 1005.19(b)(5). The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of prepaid account programs with fewer than 3,000 open accounts, regardless of the issuer's total number of open accounts.

2. *De minimis exception.* Under § 1005.19(b)(4), an issuer is not required to submit any prepaid account agreements to the Bureau under § 1005.19(b)(1) if the issuer has fewer than 3,000 open prepaid accounts

as of the last business day of the calendar quarter. For additional guidance on the de minimis exception, see Regulation Z (12 CFR 1026.58) comment 58(c)(5)–2.

3. *Date for determining whether issuer qualifies.* Whether an issuer qualifies for the de minimis exception is determined as of the last business day of each calendar quarter. For additional guidance on the date for determining whether an issuer qualifies for the de minimis exception, see Regulation Z (12 CFR 1026.58) comment 58(c)(5)–3.

4. *Date for determining whether issuer ceases to qualify.* Whether an issuer has ceased to qualify for the de minimis exception under § 1005.19(b)(4) is determined as of the last business day of the calendar quarter. For additional guidance on the date for determining whether an issuer ceases to qualify for the de minimis exception, see Regulation Z (12 CFR 1026.58) comment 58(c)(5)–4.

5. *Option to withdraw agreements.* Section 1005.19(b)(4) provides that if an issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the issuer must continue to make quarterly submissions to the Bureau as required by § 1005.19(b)(1) until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau. For additional guidance on an issuer's option to withdraw its agreements submitted to the Bureau, see Regulation Z (12 CFR 1026.58) comment 58(c)(5)–5.

19(b)(6) Form and Content of Agreements Submitted to the Bureau

1. *''As of'' date.* Agreements submitted to the Bureau must contain the provisions of the agreement and fee information in effect as of the last business day of the preceding calendar quarter. For example, on June 1, an issuer decides to decrease the out-of-network ATM withdrawal fee associated with one of the agreements it offers to the public. The change in that fee will become effective on August 1. If the issuer submits the agreement to the Bureau on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower out-of-network ATM withdrawal fee because that lower fee was not in effect on June 30, the last business day of the preceding calendar quarter.

2. *Fee agreement variations do not constitute separate agreements.* Fee information that may vary from one consumer to another depending on the consumer's state of residence or other factors must be disclosed by setting forth all the possible variations or by providing a range of possible variations. Two agreements that differ only with respect to variations in the fee information do not constitute separate agreements for purposes of this section. For example, an issuer offers two types of prepaid accounts that differ only with respect to the monthly fee. The monthly fee for one type of account is $4.95, while the monthly fee for the other type of account is $0 if the consumer regularly receives direct deposit to the prepaid account. The provisions of the agreement and fee information for the two types of accounts are otherwise identical. The issuer should not submit to the Bureau one agreement with fee information listing a $4.95 monthly fee and another agreement with fee information listing a $0 monthly fee. Instead, the issuer should submit to the Bureau one agreement with fee information listing possible monthly fees of $4.95 or $0, including the explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

3. *Integrated agreement requirement.* Issuers may not provide provisions of the agreement or fee information in the form of change-in-terms notices or riders. The only addendum that may be submitted as part of an agreement is the optional fee information addendum described in § 1005.19(b)(6)(ii). Changes in provisions or fee information must be integrated into the body of the agreement or the optional fee information addendum described in § 1005.19(b)(6)(ii). For example, it would be impermissible for an issuer to submit to the Bureau an agreement in the form of a terms and conditions document dated January 1, 2015, four subsequent change in terms notices, and 2 addenda showing variations in fee information. Instead, the issuer must submit a document that integrates the changes made by each of the change in terms notices into the body of the original terms and conditions document and a single optional addendum displaying variations in fee information.

19(c) Posting of Agreements Offered to the Public

1. *Requirement applies only to agreements submitted to the Bureau.* Issuers are only required to post and maintain on their publicly available Web site the prepaid account agreements that the issuer must submit to the Bureau under § 1005.19(b). This posting requirement is distinct from that of § 1005.7, which requires an issuer to provide certain disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account, as well as the change in terms notice required under § 1005.8(a). This requirement is also distinct from that of § 1005.18(b)(2)(ii), which requires issuers to make the long form disclosure available to consumers prior to prepaid account acquisition and which, depending on the methods an issuer offers prepaid accounts to consumers, may require posting of the long form disclosure on the issuer's Web site. If, for example, an issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception under § 1005.19(b)(4), the issuer is not required to post and maintain any agreements on its Web site under § 1005.19(c). The issuer is still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d) by posting and maintaining the agreement on the issuer's Web site or by providing a copy of the agreement upon the consumer's request. The issuer may also be required to post the long form fee disclosure required by § 1005.18(b)(2)(ii) online as well, depending on the methods by which the issuer offers prepaid accounts to consumers.

2. *Issuers that do not otherwise maintain Web sites.* If an issuer is required to submit one or more agreements to the Bureau under § 1005.19(b) that issuer must post those agreements on a publicly available Web site it maintains. If an issuer provides consumers with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is considered to maintain that Web site for purposes of § 1005.19. Such a third-party Web site is deemed to be maintained by the issuer for purposes of § 1005.19(c) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide consumers with access to account-specific information through a third-party Web site can comply with § 1005.19(c) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party Web site in accordance with § 1005.19(c).

19(d) Agreements for All Open Accounts

1. *Requirement applies to all open accounts.* The requirement to provide access to prepaid account agreements under § 1005.19(d) applies to all open prepaid accounts, unless the agreements are required to be submitted to the Bureau pursuant to § 1005.19(b) and posted on the issuer's Web site pursuant to § 1005.19(c). For example, an issuer that is not required to submit agreements to the Bureau because it qualifies for the de minimis exception under § 1005.19(b)(4) would still be required to provide consumers with access to their specific agreements under § 1005.19(d). Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Bureau under § 1005.19(b), but would still need to be provided to the consumer to whom it applies under § 1005.19(d).

* * * * *

Section 1005.30 Remittance Transfer Definitions

* * * * *

30(g) Sender

* * * * *

3. *Non-consumer accounts.* A transfer that is requested to be sent from an account that was not established primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account held by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, is not requested primarily for personal, family, or household purposes. A consumer requesting a transfer from such an account therefore is not a sender under § 1005.30(g). Additionally, a transfer that is requested to be sent from an account held by a financial institution under a bona fide trust agreement pursuant to § 1005.2(b)(2) is not requested primarily for personal, family, or household purposes, and

a consumer requesting a transfer from such an account is therefore not a sender under § 1005.30(g).

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 11. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

■ 12. Section 1026.2 is amended by revising paragraph (a)(15) to read as follows:

§ 1026.2 Definitions and rules of construction.

(a) * * *

(15)(i) *Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit.

(ii) *Credit card account under an open-end (not home-secured) consumer credit plan* means any open-end credit account that is accessed by a credit card, except:

(A) A home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card;

(B) An overdraft line of credit that is accessed by a debit card;

(C) An overdraft line of credit that is accessed by an account number, except if:

(*1*) The account number is a prepaid card that is a credit card; or

(*2*) The account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

(iii) *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge.

(iv) *Debit card* means any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account. The term *debit card* does not include a prepaid card.

(v) *Prepaid card* means any card, code, or other device that can be used to access a prepaid account.

(vi) *Prepaid account* means a prepaid account as defined in 12 CFR 1005.2(b)(3).

(vii) *Account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor* means an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor.

* * * * *

■ 13. Section 1026.4 is amended by revising paragraphs (b)(2), (c)(3), and (c)(4) to read as follows:

§ 1026.4 Finance charge.

* * * * *

(b) * * *

(2) Service, transaction, activity, and carrying charges, including:

(i) Except as provided for prepaid accounts in paragraph (b)(2)(ii) of this section, any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature; and

(ii) Any charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card or accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, regardless of whether the creditor imposes the same, greater or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended.

* * * * *

(c) * * *

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. This exception does not apply to credit accessed by a prepaid card or to credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. This exception does not apply to credit accessed by a prepaid card or to credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

* * * * *

Subpart B—Open-End Credit

■ 14. Section 1026.7 is amended by revising paragraph (b)(11)(ii)(A) to read as follows:

§ 1026.7 Periodic statement.

* * * * *

(b) * * *

(11) * * *

(ii) * * *

(A) Periodic statements provided solely for charge card accounts except:

(*1*) A charge card account accessed by a charge card that is a prepaid card; or

(*2*) A charge card account accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor; and

* * * * *

■ 15. Section 1026.12 is amended by revising paragraph (d) and adding paragraph (h) to read as follows:

§ 1026.12 Special credit card provisions.

* * * * *

(d) *Offsets by card issuer prohibited*—(1) *General rule.* A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) *Rights of the card issuer.* This paragraph does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) *Periodic deductions.* (i) This paragraph does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 1026.13(d)(1)).

(ii) With respect to credit cards that are also prepaid cards or credit cards that are also account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, for purposes of this paragraph (d)(3), ''periodically'' means no more frequently than once per calendar month, such as on a monthly due date

disclosed on the applicable periodic statement in accordance with the requirements of § 1026.7(b)(11)(i) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer.

* * * * *

(h) *Timing requirement for solicitation or application with respect to a prepaid cardholder.* (1) A card issuer shall not open a credit card account for a consumer holding a prepaid account, or make a solicitation or provide an application to a consumer holding a prepaid card to open a credit or charge card account, accessed by the prepaid card or by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, until at least 30 calendar days after the consumer has registered the prepaid account. If a card issuer has established an existing credit or charge card account with a holder of a prepaid card that is accessed by a prepaid card or an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the card issuer shall not allow an additional prepaid card obtained by the consumer from the card issuer to access the credit or charge card account, or permit credit from the credit or charge card account to be deposited into an additional prepaid account, until at least 30 calendar days after the consumer has registered the additional prepaid account.

(2) For purposes of paragraph (h) of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. A ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of paragraph (h) of this section.

■ 16. Section 1026.13 is amended by revising paragraph (i) to read as follows:

§ 1026.13 Billing error resolution.

* * * * *

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* A creditor shall comply with the requirements of Regulation E, 12 CFR 1005.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section if:

(1) With respect to an asset account other than a prepaid account, an extension of credit that is incident to an electronic fund transfer occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; or

(2) With respect to a credit plan in connection with a prepaid account, an extension of credit incident to an electronic fund transfer when the consumer's prepaid account is overdrawn if the credit plan is subject to subpart B of this regulation.

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

■ 17. Section 1026.52 is amended by revising paragraph (a) to read as follows:

§ 1026.52 Limitations on fees.

(a) *Limitations during first year after account opening.* * * *

* * * * *

■ 18. Section 1026.60 is amended by revising paragraph (a)(5)(iv) to read as follows:

§ 1026.60 Credit and charge card applications and solicitations.

(a) * * *

(5) * * *

(iv) Lines of credit accessed solely by account numbers except where the account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor;

* * * * *

■ 19. In Supplement I to Part 1026:

■ a. Under *Section 1026.2—Definitions and Rules of Construction:*

■ i. In subsection *2(a)(7) Card Issuer,* paragraph 1 is revised and paragraph 2 is added.

■ ii. In subsection *2(a)(14) Credit,* paragraph 3 is added.

■ iii. In subsection *Paragraph 2(a)(15):*

■ A. Paragraphs 1, 2.i.B, 2.ii.C, 3 and 4 are revised.

■ B. Paragraphs 2.i.F, 2.i.G, 5 and 6 are added.

■ iv. In subsection *Paragraph 2(a)(17)(iii),* paragraph 2 is added.

■ v. In subsection *2(a)(20) Open-End Credit,* paragraphs 2 and 4 are revised.

■ b. Under *Section 1026.4—Finance Charge:*

■ i. In subsection *4(a) Definition,* paragraphs 4.iii and 4.iv are added.

■ ii. In subsection *Paragraph 4(b)(2),* paragraph 1 is revised.

■ iii. In subsection *Paragraph 4(c)(3),* paragraph 1 is revised.

■ iv. In subsection *Paragraph 4(c)(4),* paragraph 1 is revised.

■ c. Under *Section 1026.5—General Disclosure Requirements:*

■ i. In subsection *5(b) Time of Disclosures:*

■ ii. In subsection *5(b)(2) Periodic Statements:*

■ A. In subsection *5(b)(2)(ii) Timing Requirements,* paragraph 4.i is revised.

■ d. Under *Section 1026.8—Identifying Transactions on Periodic Statements:*

■ i. In subsection *8(a) Sale Credit,* paragraph 2 is revised.

■ ii. In subsection *8(b) Nonsale Credit,* paragraphs 1 and 2 are revised.

■ e. Under *Section 1026.10—Payments:*

■ i. In subsection *10(a) General Rule,* paragraph 2.ii is revised.

■ ii. In subsection *10(b) Specific Requirements for Payments,* paragraph 1 is revised.

■ f. Under *Section 1026.12—Special Credit Card Provisions:*

■ i. In subsection *12(a) Issuance of Credit Cards:*

■ A. In subsection *Paragraph 12(a)(1),* paragraphs 2 and 7 are revised.

■ B. In subsection *Paragraph 12(a)(2),* paragraph 6 is revised.

■ ii. In subsection *12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer,* paragraph 5 is added.

■ iii. In subsection *12(c)(1) General Rule,* paragraph 1 is revised.

■ iv. In subsection *12(d) Offsets by Card Issuer Prohibited,* paragraph 1 is added.

■ v. In subsection *Paragraph 12(d)(1),* paragraph 2 is revised.

■ vi. In subsection *Paragraph 12(d)(2),* paragraph 1 is revised.

■ vii. In subsection *Paragraph 12(d)(3),* paragraph 3 is added.

■ viii. Subsection *12(h) Timing Requirement for Solicitation or Application With Respect to a Prepaid Cardholder* is added.

■ g. Under *Section 1026.13—Billing Error Resolution:*

■ i. In subsection *13(a) Definition of a Billing Error:*

■ A. In subsection *Paragraph 13(a)(3),* paragraph 2 is revised

■ ii. In subsection *13(i) Relation to Electronic Fund Transfer Act and Regulation E,* paragraphs 1, 2, and 3 are revised and paragraphs 4 and 5 are added.

■ h. Under *Section 1026.52—Limitations on Fees:*

■ i. In subsection *52(a) Limitations During First Year After Account Opening:*

■ A. In subsection *52(a)(1) General Rule,* paragraph 1 is revised and paragraphs 1.iii and 1.iv are added.

■ ii. In subsection *52(a)(2) Fees Not Subject to Limitations,* paragraphs 2 and 3 are revised and paragraphs 4 and 5 are added.

■ iii. In subsection *52(b) Limitations on Penalty Fees:*

■ A. In subsection *52(b)(2) Prohibited fees:*
■ B. In subsection *52(b)(2)(i) Fees that Exceed Dollar Amount Associated with Violation,* paragraph 7 is added.
■ i. Under *Section 1026.57—Reporting and Marketing Rules for College Student Open-End Credit:*
■ i. In subsection *57(a) Definitions:*
■ A. In subsection *57(a)(1) College Student Credit Card,* paragraph 1 is revised.
■ B. In subsection *57(a)(5) College Credit Card Agreement,* paragraph 1 is revised.
■ ii. In subsection *57(b) Public Disclosure of Agreements,* paragraph 3 is added.
■ iii. In subsection *57(c) Prohibited Inducement,* paragraph 7 is added.
■ j. Under *Section 1026.60—Credit and Charge Card Applications and Solicitation:*
■ i. Paragraph 1 is revised.
■ ii. In subsection *60(b) Required Disclosures:*
■ A. In subsection *60(b)(4) Transaction Charges,* paragraph 3 is added.
■ B. In subsection *60(b)(8) Cash Advance Fee,* paragraphs 4 and 5 are added.

The revisions and additions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

Subpart A—General

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Section 1026.2 Definitions and Rules of Construction

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2(a)(7) Card Issuer

1. *Agent.* i. An agent of a card issuer is considered a card issuer. Except as provided in comment 2(a)(7)–1.ii, because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

ii. Under § 1026.2(a)(7), with respect to a prepaid card that is a credit card where the card accesses a credit plan that is offered by a third party, a party offering the credit plan that is accessed by the prepaid card would be an agent of the person issuing the prepaid card and thus, would be a card issuer with respect to the prepaid card that is a credit card.

2. *Prepaid cards.* With respect to credit accessed by a prepaid card, a person is not a card issuer if the card only accesses credit that is not subject to any finance charge or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. For example, a person is not a card issuer if (1) the prepaid card only accesses credit where the person does not impose any finance charge or any fee described in § 1026.4(c) for the credit or for participation in a credit plan; and (2) the person expects repayment when funds are deposited into the prepaid account. In this case, the prepaid card is not a credit card and therefore the person issuing the card is not a card issuer. *See* comment 2(a)(15)–2.i.F.

* * * * *

2(a)(14) Credit

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3. *Transactions on prepaid accounts when there are insufficient funds.* Credit includes an authorized transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization. It also includes a paid transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. This includes a transaction where the consumer has sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at the time the transaction is paid.

Paragraph 2(a)(15)

1. *Usable from time to time.* A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards. With respect to a preauthorized check that is issued on a prepaid account for which the funds are withdrawn at the time of preauthorization using the prepaid account number, the credit is obtained using the prepaid account number and not the check. See comment 2(a)(15)–2.i.F for discussion of when a prepaid account number is a credit card.

2. * * *

i. * * *

B. A debit card (other than a debit card that is solely an account number) that also accesses a credit account (that is, a debit-credit card). See comment 2(a)(15)–2.ii.C for guidance on whether a debit card that is solely an account number is a credit card.

* * * * *

F. A prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments.

G. An account number described in § 1026.2(a)(15)(vii). For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number and funds from that line of credit are permitted to be deposited directly only into particular prepaid accounts identified by the creditor (such as a prepaid account with the same creditor), the account number is a credit card for purposes of § 1026.2(a)(15)(i). See also § 1026.2(a)(15)(vii) and related commentary for additional guidance on these account numbers.

ii. * * *

C. Except as provided in comment 2(a)(15)–2.i.F and G, an account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of § 1026.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of § 1026.2(a)(15)(i), regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction. Furthermore, if the line of credit can also be accessed by a card (such as a debit card), that card is a credit card for purposes of § 1026.2(a)(15)(i).

3. *Charge card.* i. Charge cards are credit cards where no periodic rate is used to compute the finance charge. Under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in Subparts B and G generally include charge cards. The term *charge card* is, however, distinguished from credit card or credit card account under an open-end (not home-secured) consumer credit plan in §§ 1026.60, 1026.6(b)(2)(xiv), 1026.7(b)(11) (except as described in comment 2(a)(15)–3.ii below), 1026.7(b)(12), 1026.9(e), 1026.9(f), 1026.28(d), 1026.52(b)(1)(ii)(C), and Appendices G–10 through G–13.

ii. A prepaid card is a charge card if it also is a credit card where no periodic rate is used to compute the finance charge. See comment 2(a)(15)–2.i.F for when a prepaid card is a credit card. Likewise, an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor is a charge card if it is a credit card where no periodic rate is used to compute the finance charge. See § 1026.2(a)(15)(vii) and comment 2(a)(15)–2.i.G for when such an account number is a credit card. Unlike other charge cards, such a prepaid card or account number that accesses a credit card account under an open-end (not home-secured) consumer credit plan is subject to the requirements in § 1026.7(b)(11). Thus, under § 1026.5(b)(2)(ii), for credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer of a prepaid card or account number that meets the definition of a charge card because it does not impose a finance charge structured as a periodic rate must adopt reasonable procedures designed to ensure that (1) periodic statements are mailed or delivered

at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A), and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

4. *Credit card account under an open-end (not home-secured) consumer credit plan.* i. An open-end consumer credit account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 1026.2(a)(15)(ii) if:

A. The account is accessed by a credit card, as defined in § 1026.2(a)(15)(i); and

B. The account is not excluded under § 1026.2(a)(15)(ii)(A), (a)(15)(ii)(B) or (a)(15)(ii)(C).

ii. As noted in § 1026.2(a)(15)(ii)(C), the exclusion from credit card account under an open-end (not home-secured) consumer credit plan provided by that paragraph does not apply to:

A. An overdraft line of credit that is accessed by a prepaid card (including a prepaid card that is solely an account number) that is a credit card; and

B. An overdraft line of credit accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

5. *Account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.* As defined in § 1026.2(a)(15)(vii), this phrase means an account number that is not a prepaid account that can be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. A credit plan that permits a consumer to deposit directly extensions of credit into a checking account would not constitute a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. A credit plan where a consumer could access the credit plan by use of checks or in-person withdrawals would constitute a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, so long as the credit plan allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit into asset accounts other than particular prepaid accounts specified by the creditor. These account numbers would be credit cards as discussed in comment 2(a)(15)–2.i.G.

6. *Definition of prepaid card.* The term ''prepaid card'' in § 1026.2(a)(15)(v) includes any card, code or other device that can be used to access a prepaid account, including a prepaid account number or other code. The phrase ''credit accessed by a prepaid card'' means any credit that is accessed by any card, code or other device that also can be used to access a prepaid account.

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2(a)(17) Creditor

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Paragraph 2(a)(17)(iii)

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2. *Prepaid cards.* With respect to credit accessed by a prepaid card, § 1026.2(a)(17)(iii) does not apply if the card only accesses credit that is not subject to any finance charge or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. In this case, the prepaid card is not a credit card and the person issuing the card is not a card issuer. *See* comments 2(a)(15)–2.i.F. For example, a person is not a creditor if (1) the prepaid card only accesses credit where the person does not impose any finance charge or any fee described in § 1026.4(c) for the credit or for participation in a credit plan; and (2) the person expects repayment when funds are deposited into the prepaid account.

* * * * *

2(a)(20) Open-End Credit

* * * * *

2. *Existence of a plan.* i. The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer.

ii. With respect to credit accessed by a prepaid card, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely pays transactions when a consumer has insufficient or unavailable funds in a prepaid account and the consumer is obligated contractually to repay those transactions. Such a program constitutes a plan notwithstanding that the creditor retains discretion not to pay such transactions, the creditor does not pay transactions once the consumer has exceeded a certain amount of credit, or the creditor only pays transactions where there were sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction was authorized but not sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction is paid. For example, a program constitutes a plan where a creditor will routinely pay a transaction when the consumer does not have adequate funds in the prepaid account to cover the full amount of the transaction and the consumer is obligated contractually to repay that transaction.

iii. With respect to credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor extending the credit, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely will extend credit that is deposited directly into particular prepaid accounts specified by the creditor and the consumer is obligated contractually to repay the credit. Such a program constitutes a plan notwithstanding that the creditor retains discretion not to extend credit, or the creditor does not extend credit once the consumer has exceeded a certain amount of credit. For example, a program constitutes a plan where a creditor routinely will extend credit that is deposited directly into a particular prepaid account specified by the creditor when the consumer requests an extension because the consumer does not have adequate funds in the prepaid account to cover the full amount of a transaction using the prepaid card and the consumer is obligated contractually to repay the credit.

iv. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multifeatured plan.

* * * * *

4. *Finance charge on an outstanding balance.* i. The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

ii. With respect to credit accessed by a prepaid card (including a prepaid card that is solely an account number) or credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, any service, transaction, activity, or carrying charges imposed on a credit account, and any such charges imposed on a prepaid account if that charge is related to an extension of credit, carrying a credit balance, or credit availability, generally would be a finance charge. *See* § 1026.4(a), (b)(2), (c)(3) and (c)(4) and comments 4(a)–4 and 4(b)(2)–1. Such charges would include periodic participation fees for the credit plan and transaction charges imposed in connection with a credit extension. With respect to that credit, such

service, transaction, activity or carrying charges constitute finance charges imposed from time to time on an outstanding unpaid balance if there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated.

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Section 1026.4 Finance Charge

4(a) Definition

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4. * * *

iii. Any transaction charge imposed on a cardholder by a card issuer for credit accessed by a prepaid card is a finance charge regardless of whether the card issuer imposes the same, greater or lesser charge on the withdrawal of funds from a prepaid account.

iv. Any transaction charge imposed on a cardholder by a card issuer for credit accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor is a finance charge regardless of whether the card issuer imposes the same, greater or lesser charge on the withdrawal of funds from a prepaid account.

* * * * *

4(b) Examples of Finance Charges

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Paragraph 4(b)(2)

1. *Checking or transaction account charges.* i. Except for prepaid accounts as provided in § 1026.4(b)(2)(ii) and in comment 4(b)(2)–1.ii, .iii and .iv below, a checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 1026.4(b)(2)(i) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 1026.4(b)(2)(i). To illustrate:

A. A $5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 1026.4(c)(4).)

B. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $5 charge is not a finance charge.

ii. Under § 1026.4(b)(2)(ii), the term finance charge includes any service, transaction, activity, or carrying charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card or credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, regardless of whether the creditor imposes the same, greater or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended. To illustrate,

A. A $15 transaction charge is imposed on the prepaid account each time a consumer uses a prepaid card or an account number described in § 1026.4(b)(2)(ii) to access an open-end credit plan. The $15 charge is a finance charge regardless of whether the creditor imposes the same, greater or lesser charge to withdraw funds from the prepaid account.

B. A $1.50 transaction charge is imposed on the prepaid account for each transaction that is made with the prepaid card, including when the prepaid card is used to access credit where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization or at the time the transaction is paid. The $1.50 transaction charge is a finance charge when the prepaid card accesses credit, notwithstanding that a $1.50 transaction charge also is imposed on transactions that solely access funds in the prepaid account.

C. A $5 monthly service charge is imposed on the prepaid account for the availability of an open-end plan that is accessed by a prepaid card or an account number described in § 1026.4(b)(2)(ii). The $5 monthly service charge is a finance charge regardless of whether the creditor imposes the same, greater or lesser monthly service charge to hold the prepaid account.

iii. For purposes of § 1026.4(b)(2)(ii), charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability include:

A. Transaction fees for credit extensions;

B. Fees for transferring funds from a credit account to a prepaid account;

C. A daily, weekly, or monthly (or other periodic) fee assessed each period a prepaid account is in ''overdraft'' status, or would be in overdraft status but for funds supplied by a linked line of credit;

D. A daily, weekly, or monthly (or other periodic) fee assessed each period a line of credit accessed by a prepaid card or account number described in § 1026.4(b)(2)(ii) has an outstanding balance; or

E. Participation fees or other fees that the consumer is required to pay for the issuance or availability of credit.

iv. Section § 1026.4(b)(2)(ii) does not apply to transaction fees imposed on the prepaid account that relate to transactions that only access funds in the prepaid account, fees for opening or holding the prepaid account, and other fees, such as cash reload fees and balance inquiry fees, that are not imposed on the prepaid account because the consumer engaged in a transaction that is funded in whole or in part by credit, for holding a credit plan, or for carrying a credit balance. These fees are not considered charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability even if there are not sufficient funds in the prepaid account to pay the fees at the time they are imposed on the prepaid account. Nonetheless, any negative balance on the prepaid account, whether from fees or other transactions, would be a credit extension and if a fee is imposed for such credit extension, the fee would be a finance charge under § 1026.4(b)(2)(ii). For example, if a cash-reload fee is imposed on the prepaid account, there are not sufficient funds in the prepaid account to pay the fee at the time it is imposed on the prepaid account, and an additional charge is imposed on the prepaid account for this credit extension, the additional charge would be a transaction charge imposed on a prepaid account in connection with an extension of credit and would be a finance charge under § 1026.4(b)(2)(ii).

* * * * *

Paragraph 4(c)(3)

1. *Assessing interest on an overdraft balance.* Except with respect to credit accessed by a prepaid card or an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

Paragraph 4(c)(4)

1. *Participation fees—periodic basis.* The participation fees described in § 1026.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. Except as provided in § 1026.4(c)(4) for prepaid accounts, the provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

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Section 1026.5 General Disclosure Requirements

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5(b)(2)(ii) Timing Requirements

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4. *Application of § 1026.5(b)(2)(ii) to charge card and charged-off accounts.* i. *Charge card accounts.* For purposes of § 1026.5(b)(2)(ii)(A)(*1*), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to § 1026.7(b)(11)(i)(A). Because § 1026.7(b)(11)(ii) provides that § 1026.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts other than charge card accounts accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the

creditor, § 1026.5(b)(2)(ii)(A)(*1*) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, § 1026.5(b)(2)(ii)(A)(*2*) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement. A card issuer that complies with § 1026.5(b)(2)(ii)(A) as discussed above with respect to a charge card account has also complied with § 1026.5(b)(2)(ii)(B)(*2*). Section 1026.5(b)(2)(ii)(B)(*1*) does not apply to charge card accounts because, for purposes of § 1026.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with § 1026.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate.

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Section 1026.8 Identifying Transactions on Periodic Statements

8(a) Sale Credit

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2. *Amount.* i. *Transactions not billed in full.* If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; or the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements should reflect each installment due, together with either any other identifying information required by § 1026.8(a) (such as the seller's name and address in a three-party situation) or other appropriate identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.

ii. *Prepaid cards.* The term ''sale credit'' includes a purchase in which the consumer uses a prepaid card that is a credit card to obtain goods or services from a merchant and the transaction is wholly or partially funded by credit, whether or not the merchant is the card issuer or creditor. If a prepaid card that is a credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer's prepaid account, and partially funded by credit, the amount to be disclosed under § 1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction. For a transaction at point of sale where credit is accessed by a prepaid card that is a credit card, and that transaction partially involves the purchase of goods or services and partially involves other credit such as cash back given to the cardholder, the creditor must disclose the entire amount of the credit as sale credit, including the part of the transaction that does not relate to the purchase of goods or services.

* * * * *

8(b) Nonsale Credit

1. *Nonsale credit.* The term ''nonsale credit'' refers to any form of loan credit including, for example:

i. A cash advance.

ii. An advance on a credit plan that is accessed by overdrafts on an asset account other than a prepaid account.

iii. The use of a ''supplemental credit device'' in the form of a check or draft or the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services.

iv. Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

v. An advance at an ATM on a credit plan that is accessed by a prepaid card that is a credit card. If a prepaid card that is a credit card is used to obtain an advance at an ATM and the transaction is partially funded by the consumer's prepaid account, and partially funded by a credit extension, the amount to be disclosed under § 1026.8(a) is the amount of the credit extension, not the total amount of the ATM transaction.

vi. An advance on a credit plan accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

2. *Amount—overdraft credit plans.* If credit is extended under an overdraft credit plan tied to an asset account other than a prepaid account or by means of a debit card tied to an overdraft credit plan:

i. The amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

ii. The creditor may disclose the amount of the credit extensions on a cumulative daily basis, rather than the amount attributable to each check or each use of the debit card that accesses the credit plan.

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Section 1026.10 Payments

10(a) General Rule

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2. * * *

ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date. Section 1026.12(d)(3)(ii) defines ''periodically'' to mean no more frequently than once per calendar month for payroll deduction plans for prepaid cards that are credit cards or for account numbers that are credit cards where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In a payroll deduction plan in which funds are deposited to a prepaid account held by the creditor, and from which payments are made on a monthly basis to a credit card account held by the creditor that is accessed by a prepaid card that is a credit card, or by account numbers that are credit cards where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, payment is received on the date when it is debited to the prepaid account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

* * * * *

10(b) Specific Requirements for Payments

1. *Payment by electronic fund transfer.* A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. See Section 913 of the Electronic Fund Transfer Act and Regulation E, 12 CFR 1005.10(e).

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Section 1026.12 Special Credit Card Provisions

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12(a) Issuance of Credit Cards

Paragraph 12(a)(1)

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2. *Addition of credit features.* If the consumer has a non-credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. For example, the following constitute issuance of a credit card:

i. Granting overdraft privileges on a checking account when the consumer already has a check guarantee card; or

ii. Allowing a prepaid card to access a credit plan that would make the card into a credit card under § 1026.2(a)(15)(i).

* * * * *

7. *Issuance of non-credit cards.* i. *Issuance of non-credit cards other than prepaid cards.* A. Under § 1026.12(a)(1), a credit card cannot be issued except in response to a request or an application. (*See* comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A non-credit card other than a prepaid card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card other than a prepaid card only upon the consumer's specific request.

B. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 1026.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

ii. *Issuance of a prepaid card.* Section 1026.12(a)(1) does not apply to the issuance of a prepaid card where an issuer does not

connect the card to any credit plan that would make the prepaid card into a credit card at the time the card is issued and only opens a credit card account, or provides an application or solicitation to open a credit or charge card account, that would be accessed by that card in compliance with § 1026.12(h). A credit card feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with § 1026.12(h). An issuer does not connect a prepaid card to a credit plan that would make the card into a credit card simply by providing the disclosures required by Regulation E 12 CFR 1005.18(b)(2)(i)(B)(*9*) and 18(b)(2)(ii)(B) with the prepaid card.

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Paragraph 12(a)(2)

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6. *One-for-one rule—exceptions.* The regulation does not prohibit the card issuer from:

i. Replacing a single card that is both a debit card and a credit card with a credit card and a separate debit card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing a single card that is both a prepaid card and a credit card with a credit card and a separate prepaid card where the latter card is not a credit card.

iii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under § 1026.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 1026.9(c); and

C. Under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

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12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer

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5. *Prepaid cards.* Section 1026.12(c) applies to property or services purchased by a consumer using credit accessed by a credit card that also is a prepaid card. For a transaction at point of sale where a prepaid card that is a credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer's prepaid account, and partially funded by credit, the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of § 1026.12(c). The amount of the transaction funded from the prepaid account would not be subject to the requirements of § 1026.12(c).

12(c)(1) General Rule

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are ''purchased with the credit card.'' This would include when the goods or services are purchased by a consumer using credit accessed by a credit card that also is a prepaid card. This could include mail, the Internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

i. Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. This includes an advance on a credit plan accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Such a transaction would not involve ''property or services purchased with the credit card.''

ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to credit extended by the overdraft line on an asset account other than a prepaid account.)

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12(d) Offsets by Card Issuer Prohibited

1. *Meaning of funds on deposit.* For purposes of § 1026.12(d), funds of the cardholder held on deposit include funds in a consumer's prepaid account. In addition, for purposes of § 1026.12(d), deposit account includes a prepaid account.

Paragraph 12(d)(1)

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2. *Funds intended as deposits.* If the consumer tenders funds as a deposit (to a checking account, for example) or if the card issuer receives funds designated for the consumer's prepaid account with the issuer, such as by means of an ACH deposit or an electronic transmittal of funds the consumer submits as cash at a non-bank location, the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account.

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Paragraph 12(d)(2)

1. *Security interest—limitations.* In order to qualify for the exception stated in § 1026.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's account-opening disclosures under § 1026.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in § 1026.12(d)(2). For a security interest to qualify for the exception under § 1026.12(d)(2) the following conditions must be met:

i. The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account.

ii. For deposit accounts other than prepaid accounts, indicia of the consumer's awareness and intent to grant a security interest include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent):

A. Separate signature or initials on the agreement indicating that a security interest is being given.

B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions.

C. Reference to a specific amount of deposited funds or to a specific deposit account number.

iii. For prepaid accounts, in order for a consumer to show awareness and intent to grant a security interest, all of the following conditions must be met:

A. In addition to being disclosed in the issuer's account-opening disclosures under § 1026.6, the security agreement must be provided to the consumer in a document separate from the prepaid account agreement and the credit card account agreement;

B. The separate document setting forth the security agreement must be signed by the consumer;

C. The separate document setting forth the security agreement must refer to the prepaid account number and to a specific amount of funds in the prepaid account in which the card issuer is taking a security interest and these two elements of the document must be separately signed or initialed by the consumer;

D. The separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest and each of those conditions must be separately signed or initialed by the consumer.

iv. The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 1026.12(d)(2).

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Paragraph 12(d)(3)

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3. *Prepaid accounts.* With respect to credit cards that are also prepaid cards or credit cards that are also account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a card issuer is not prohibited under § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of § 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account (such as a prepaid account) more frequently than once per calendar month, pursuant to such a plan. To illustrate, with respect to credit cards that are also prepaid cards or credit cards that are also account numbers where extensions of credit are permitted to be deposited directly

only into particular prepaid accounts specified by the creditor, assume that a periodic statement is sent out each month to a cardholder on the first day of the month and the payment due date for the amount due on that statement is the 25th day of each month. In this case,

i. The card issuer is not prohibited under § 1026.12(d) from automatically deducting the amount due on the periodic statement on the 25th of each month, or on an earlier date in each calendar month, from a deposit account held by the card issuer, if the deductions are pursuant to a plan that is authorized in writing by the cardholder (as discussed in comment 12(d)(3)–1) and comply with the limitations in § 1026.13(d)(1).

ii. The card issuer is prohibited under § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made to the deposit account.

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12(h) Timing Requirement for Solicitation or Application With Respect to a Prepaid Cardholder

1. *Meaning of registration of a prepaid card or prepaid account.* A prepaid card or prepaid account is registered, such that the 30-day interval required by § 1026.12(h) begins, when the issuer of the prepaid card or prepaid account successfully completes its collection of consumer identifying information and identity verification in accordance with the requirements of applicable Federal and state law. The beginning of the required 30-day interval is triggered by successful completion of collection of consumer identifying information and identity verification, not by the consumer's mere purchase or obtaining of the card.

2. *Unsolicited issuance of credit cards and disclosures related to applications or solicitations for credit or charge card accounts.* See § 1026.12(a)(1) and comment 12(a)(1)–7 for additional rules that apply to the addition of a credit or charge card account to a previously-issued prepaid account. See also § 1026.60 and related commentary for disclosures that generally must be provided on or with applications or solicitations to open a credit or charge card account.

Section 1026.13 Billing Error Resolution

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13(a) Definition of a Billing Error

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Paragraph 13(a)(3)

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2. *Application to purchases made using a third-party payment intermediary and prepaid cards.* i. *Third-party intermediaries.* Section 1026.13(a)(3) generally applies to disputes about goods and services that are purchased using a third-party payment intermediary, such as a person-to-person Internet payment service, funded through use of a consumer's credit plan when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Under these circumstances, the property or service for which the extension of credit is made is not the payment service, but rather the good or service that the consumer has purchased using the payment service. Thus, for example, § 1026.13(a)(3) would not apply to purchases using a third party payment intermediary that is funded through use of a credit plan if:

A. The extension of credit is made to fund the third-party payment intermediary ''account,'' but the consumer does not contemporaneously use those funds to purchase a good or service at that time; or

B. The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.

ii. *Prepaid cards.* Section 1026.13(a)(3) generally applies to disputes about goods and services that are purchased using a prepaid card funded through use of a consumer's credit plan accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Under these circumstances, the property or service for which the extension of credit is made is not for funding the prepaid account, but rather for the good or service that the consumer has purchased using the prepaid account. Thus, for example, § 1026.13(a)(3) would not apply to purchases using a prepaid card that is funded through use of such a credit plan if:

A. The extension of credit is made to fund the prepaid account, but the consumer does not contemporaneously use those funds to purchase a good or service at that time; or

B. The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.

* * * * *

13(i) Relation to Electronic Fund Transfer Act and Regulation E

1. *Coverage.* Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension. With respect to a credit account accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, § 1026.13(i) does not apply to transfers from that plan to a prepaid account. The creditor for such transfers must comply with the billing error provisions in § 1026.13.

2. *Incidental credit using a debit card under an agreement.* With respect to an account that is not a prepaid account, for credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution, § 1026.13(i) provides that certain error resolution procedures in both this part and Regulation E apply. Incidental credit that is not extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. For example, credit inadvertently extended incident to an electronic fund-transfer using a debit card, such as under an overdraft service not subject to Regulation Z, is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. *Application to debit/credit transactions—examples.* If a consumer uses a debit card to withdraw money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction.

ii. The creditor need not provisionally credit the consumer's account, under 12 CFR 1005.11(c)(2)(i), for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under § 1005.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of § 1026.13(d) and (g) apply only to the credit portion of the transaction.

4. *Incidental credit under an overdraft credit plan subject to subpart B.* For transactions involving an overdraft credit plan subject to subpart B in connection with a prepaid account (such as a credit plan accessed by a prepaid card that is a credit card), whether Regulation E (12 CFR part 1005) or Regulation Z applies depends on the nature of the transaction. For example,

i. If the transaction solely involves an extension of credit under an overdraft plan, and does not include a debit to the prepaid account, the error resolution requirements of Regulation Z apply.

ii. If the transaction debits a prepaid account only (with no credit extended under the overdraft plan), the provisions of Regulation E apply.

iii. If the transaction debits a prepaid account but also draws on an overdraft plan subject to subpart B in connection with a prepaid account, a creditor must comply with the requirements of Regulation E, 12 CFR 1005.11 and 18(c) governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f) and (h). In this case,

A. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction.

B. The creditor need not provisionally credit the consumer's account, under 12 CFR 1005.11(c)(2)(i), for any portion of the unpaid extension of credit.

C. The creditor must credit the consumer's account under § 1005.11(c) with any finance or other charges incurred as a result of the alleged error.

D. The provisions of § 1026.13(d) and (g) apply only to the credit portion of the transaction.

5. *Incidental credit under a credit plan that is not subject to subpart B.* An overdraft credit plan is not subject to subpart B if the credit plan is only accessed by a prepaid card that is not a credit card. A prepaid card is not a credit card if the prepaid card only accesses credit that is not subject to any finance charge or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. See comment 2(a)(15)–2.i.F.

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Section 1026.52 Limitations on Fees

52(a) Limitations During First Year After Account Opening

52(a)(1) General Rule

1. *Application.* The 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account, including a prepaid account, to the card issuer or from another credit account provided by the card issuer). For example:

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iii. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a credit account accessed by the prepaid card that is a credit card on March 1 of year one. Assume that, under the terms of the credit account accessed by the prepaid card, a consumer is required to pay $50 in fees for the issuance or availability of credit at account opening. At credit account opening on March 1 of year one, the credit limit for the account is $200. Section 1026.52(a)(1) permits the card issuer to charge the $50 in fees to the credit account. However, § 1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the credit account during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees during the first year after the credit card account is opened.

iv. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a credit account accessed by the prepaid card that is a credit card on March 1 of year one. Assume that, under the terms of a credit card account accessed by the prepaid card, a consumer is required to pay $120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to five percent of the cash advance and a late payment fee of $15 if the required minimum periodic payment is not received by the payment due date (which is the twenty-fifth of the month). At credit account opening on March 1 of year one, the credit limit for the account is $500. Section 1026.52(a)(1) permits the card issuer to charge to the account the $120 in fees for the issuance or availability of credit at account opening. On April 1 of year one, the consumer uses the account for a $100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a $5 cash-advance fee to the account. On April 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a $15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a $50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a $2.50 cash advance fee to the account. Furthermore, § 1026.52(a)(1) prohibits the card issuer from collecting the $2.50 cash advance fee from the consumer by other means.

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52(a)(2) Fees Not Subject to Limitations

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2. *Fees related to prepaid cards.* Except as provided in § 1026.52(a)(2), § 1026.52(a) applies to any charge or fee, other than a charge attributable to a periodic interest rate, that the card issuer will or may require the consumer to pay in connection with a credit account accessed by a prepaid card that is a credit card, including fees that are assessed on the prepaid account in connection with credit accessed by the prepaid card. This includes, but is not limited to:

i. Per-transaction fees for ''shortages'' or ''overdrafts;''

ii. Fees for transferring funds from a credit account to a prepaid account that are both accessed by the prepaid card;

iii. A daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a prepaid account is in ''overdraft'' status, or would be in overdraft status but for funds supplied by a linked line of credit accessed by the prepaid card; or

iv. A daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a line of credit accessed by the prepaid card has an outstanding balance.

3. *Fees on credit card accounts where extensions of credit are deposited directly only in particular prepaid accounts.* Except as provided in § 1026.52(a)(2), § 1026.52(a) applies to any charge or fee, other than a charge attributable to a periodic interest rate, that the card issuer will or may require the consumer to pay in connection with a credit account accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, including fees that are assessed on the prepaid account in connection with the credit assessed by the account number. This includes, but is not limited to:

i. Per-transaction fees for ''shortages'' or ''overdrafts;''

ii. Fees for transferring funds from the credit account to a prepaid account;

iii. A daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period the line of credit accessed by the account number has an outstanding balance.

4. *Fees the consumer is not required to pay.* Section 1026.52(a)(2)(ii) provides that § 1026.52(a) does not apply to fees that the consumer is not required to pay with respect to the account. For example, § 1026.52(a) generally does not apply to fees for making an expedited payment (to the extent permitted by § 1026.10(e)), fees for optional services (such as travel insurance), fees for reissuing a lost or stolen card, or statement reproduction fees.

5. *Security deposits.* A security deposit that is charged to a credit card account is a fee for purposes of § 1026.52(a). In contrast, however, a security deposit is not subject to the 25 percent limit in § 1026.52(a)(1) if it is not charged to the account. For example, § 1026.52(a)(1) does not prohibit a card issuer from requiring a consumer to provide funds at account opening pledged as security for the account that exceed 25 percent of the credit limit at account opening so long as those funds are not obtained from the account.

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52(b) Limitations on Penalty Fees

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52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation

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7. *Declined transaction fees.* Section 1026.51(b)(2)(i)(B)(*1*) applies to declined transaction fees where an account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In addition, with respect to a credit card that is a prepaid card, the prohibition in § 1026.52(b)(2)(i)(B)(*1*) applies to the consumer's transactions using the prepaid card where a declined transaction would have accessed the consumer's credit account with the card issuer had it been authorized. Fees imposed for declining a transaction that would have only accessed the prepaid account and would not have accessed the credit card account would not be covered by § 1026.52(b)(2)(B)(i)(*1*).

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Section 1026.57 Reporting and Marketing Rules for College Student Open–End Credit

57(a) Definitions

57(a)(1) College Student Credit Card

1. *Definition.* The definition of college student credit card excludes home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by debit cards. A college student credit card includes a college affinity card within the meaning of TILA section 127(r)(1)(A). In addition, a card may fall within the scope of the definition regardless of the fact that it is not intentionally targeted at or marketed to college students. For example, an agreement between a college and a card issuer may provide for marketing of credit cards to alumni, faculty, staff, and other non-student consumers who have a relationship with the college, but also contain provisions that contemplate the issuance of cards to

students. A credit card issued to a student at the college in connection with such an agreement qualifies as a college student credit card. The definition of college student credit card includes a prepaid card that is a credit card, or an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, that is issued to any college student under a credit card account under an open-end (not home-secured) consumer credit plan. The definition of college student credit card also includes a prepaid account that is issued to any college student where an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account and the credit account may be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

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57(a)(5) College Credit Card Agreement

1. *Definition.* Section 1026.57(a)(5) defines ''college credit card agreement'' to include any business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the issuance of credit cards to full-time or part-time students. Business, marketing or promotional agreements may include a broad range of arrangements between a card issuer and an institution of higher education or affiliated organization, including arrangements that do not meet the criteria to be considered college affinity card agreements as discussed in TILA section 127(r)(1)(A). For example, TILA section 127(r)(1)(A) specifies that under a college affinity card agreement, the card issuer has agreed to make a donation to the institution or affiliated organization, the card issuer has agreed to offer discounted terms to the consumer, or the credit card will display pictures, symbols, or words identified with the institution or affiliated organization; even if these conditions are not met, an agreement may qualify as a college credit card agreement, if the agreement is a business, marketing or promotional agreement that contemplates the issuance of college student credit cards to college students currently enrolled (either full-time or part-time) at the institution. An agreement may qualify as a college credit card agreement even if marketing of cards under the agreement is targeted at alumni, faculty, staff, and other non-student consumers, as long as cards may also be issued to students in connection with the agreement. This definition also includes a business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the addition of open-end (not home-secured) consumer credit plans to previously issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. This definition also includes a business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) the agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

57(b) Public Disclosure of Agreements

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3. *Credit card account in connection with prepaid account.* Section 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of an open-end (not home-secured) consumer credit account to previously issued prepaid accounts that were issued to full-time or part-time students or (2) new prepaid accounts where a credit account may be added in connection with the prepaid account, where, in either case, the credit account would be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, under § 1026.57(b), an institution of higher education must publicly disclose such agreements.

57(c) Prohibited Inducements

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7. *Credit card accounts in connection with prepaid accounts.* Section 1026.57(c) applies to either (1) the application for or opening of a credit card account that is being added to previously issued prepaid accounts that were issued to full-time or part-time students or (2) the application for or opening of a prepaid account where a credit account may be added in connection with the prepaid account, where, in either case, the credit account would be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

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Section 1026.60 Credit and Charge Card Applications and Solicitations

1. *General.* Section 1026.60 generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. (See § 1026.60(a)(5) and (e)(2) for exceptions; see § 1026.60(a)(1) and accompanying commentary for the definition of solicitation; see also § 1026.2(a)(15) and accompanying commentary for the definition of charge card and § 1026.12(h) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts.)

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60(b)(4) Transaction Charges

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3. *Prepaid cards.* If a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for credit accessed by a credit card that is a prepaid card to make a purchase, that fee is a transaction charge described in § 1026.60(b)(4). This is so whether the fee is a flat per-transaction fee to make a purchase, a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions, or a one-time fee for transferring funds from the consumer's credit account to the consumer's prepaid account to cover the shortfall in the prepaid account as a result of a purchase with the prepaid card.

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60(b)(8) Cash Advance Fee

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4. *Prepaid cards.* If a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance accessed by a credit card that is a prepaid card, such as a cash withdrawal at an ATM, that fee is a cash advance fee. If the cash advance fee is the same dollar amount as the transaction charge for purchases described in § 1026.6(b)(2)(iv), the card issuer may disclose the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances. Examples of how fees for purchase transactions described in § 1026.60(b)(4) and fees for cash advances described in § 1026.60(b)(8) must be disclosed are as follows:

i. A card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer assesses a $25 fee for credit accessed by a prepaid card for a cash advance at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, the card issuer must disclose separately a purchase transaction charge of $15 and a cash advance fee of $25.

ii. A card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, the card issuer may disclose the $15 fee under a heading that indicates the fee applies to both purchase transactions and ATM cash advances. Alternatively, the card issuer may disclose the $15 fee on two separate rows, one row indicating that a $15 fee applies to purchase transactions, and a

second row indicating that a $15 fee applies to ATM cash advances.

iii. A card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer also assesses a fee of $1.50 for out-of-network ATM cash withdrawals and $1.00 for in-network ATM cash withdrawals. The card issuer must disclose the cash advance fee as $16.50 for out-of-network ATM cash withdrawals, indicating that $1.50 is for the out-of-network ATM withdrawal fee, such as ''$16.50 (including a $1.50 out-of-network ATM withdrawal fee).'' The card issuer also must disclose the cash advance fee as $16.00 for in-network ATM cash withdrawals, indicating that $1.00 is for the in-network ATM withdrawal fee, such as ''$16 (including a $1.00 in-network ATM cash withdrawal fee).''

5. *Credit card accounts where extensions of credit are deposited directly only in particular prepaid accounts.* With respect to a credit card account accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for an extension of credit that will be deposited into a prepaid account that fee is a cash advance fee.

* * * * *

Dated: November 10, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2014–27286 Filed 12–22–14; 8:45 am]

BILLING CODE 4810–AM–P

FEDERAL REGISTER

Vol. 79 Tuesday,

No. 246 December 23, 2014

Part III

General Services Administration

41 CFR Part 102–33

Federal Management Regulation; Management of Government Aircraft; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–33

[FMR Change-2014–06; FMR Case 2012–102–6; Docket No. 2012–0016, Sequence 1]

RIN 3090–AJ33

Federal Management Regulation; Management of Government Aircraft

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA), Office of Government-wide Policy (OGP) provides management policies to Federal civilian agencies that manage, acquire, use, and dispose of aircraft to accomplish their missions. OGP's regular review process revealed that the aviation policies found in the Federal Management Regulation (FMR) need to be substantially revised and updated. Consequently, OGP is revising its management of Government aircraft rules in their entirety in order to foster safe, efficient, and effective aviation programs within the U.S. Government. The member agencies of the Interagency Committee for Aviation Policy (ICAP) have participated in the formation of this final rule.

This case is included in GSA's retrospective review of existing regulations under Executive Order 13563. Additional information is located in GSA's retrospective review available at: *www.gsa.gov/improving regulations.*

DATES: *Effective date:* December 23, 2014.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Robert Galloway, Director Aviation Policy, Office of Asset and Transportation Management, Office of Government-wide Policy, by phone at 202–997–7274 or through email at *robert.galloway@gsa.gov.* Please cite FMR case 2012–102–6.

SUPPLEMENTARY INFORMATION:

A. Background

The last major review and revision of policy for the management of Government aircraft occurred when GSA's Office of Government-wide Policy (OGP) moved that policy from part 101–37 of the Federal Property Management Regulations (FPMR) (41 CFR part 101–37) to part 102–33 of the Federal Management Regulation (FMR) (41 CFR part 102–33, ''Management of Government Aircraft''). The final rule implementing that move was published in the **Federal Register** at 67 FR 67743 on November 6, 2002. A minor correction was published in the **Federal Register** at 67 FR 70480 on November 22, 2002, but no further amendments have since been made to FMR part 102–33.

OGP initiated a review of the aviation policies to address current Government aviation needs, to determine what new technologies and best practices fit well into the Federal setting, and to adapt to changes in the aviation industry. In addition, OGP worked with the ICAP to identify needed revisions and updates. The ICAP membership identified a multitude of aviation policies that were obsolete, required editorial corrections, or needed to be removed or updated. GSA received substantive comments from two agencies regarding the use of the term ''forfeiture/seizure.'' In response, GSA eliminated the term ''seizure'' as a means of acquiring an aircraft, while the term ''forfeiture'' is used in the amended phrase, ''. . . transfer of previously forfeited aircraft (section 102–33.60).'' An additional comment was received regarding the recommended date for the implementation of a Safety Management System. In response, GSA modified the recommended implementation date (section 102–33.180).

Since this part was revised in November 2002, the Federal Aviation Administration (FAA) released both new and revised versions of the Advisory Circulars with information that significantly affects the Federal aviation community. Some of the topics covered by these Advisory Circulars include public aircraft, safety management systems, and unmanned aircraft systems. Finally, OGP finalized a revision to FMR part 102–39 (41 CFR part 102–39, ''Replacement of Personal Property Pursuant to the Exchange/Sale Authority'') that removed aircraft and aircraft parts from the exchange/sale prohibited list as long as such transactions are conducted in accordance with provisions found at FMR part 102–33.

B. Changes

This final rule revises current FMR part 102–33 (41 CFR part 102–33) in its entirety. The revision includes updating and correcting citations and addresses as well as editorial changes. Changes that this final rule makes to the affected FMR section(s) identified below include:

1. Adding a new section to clarify that the use of pronouns ''we,'' ''you,'' ''your,'' and ''our'' throughout part 102–33 refers to agency aviation managers and also executive agencies (section 102–33.6);
2. Adding, revising, and deleting a number of terms as defined and used in this part (section 102–33.20).
3. Adding suggested experience for Senior Aviation Management Officials (SAMO) (section 102–33.25);
4. Revising requirements for agencies that only hire aircraft occasionally or for a specific flight (section 102–33.25);
5. Revising GSA's responsibilities for Federal aviation management and adding new responsibilities (section 102–33.40);
6. Removing current section 102–33.45. Contents were added to the definitions in section 102–33.20;
7. Clarifying that aircraft selection is based on need, a strong business case, and life-cycle cost analysis (section 102–33.50);
8. Clarifying where guidance for aircraft acquisition planning can be found (section 102–33.75);
9. Removing current section 102–33.85;
10. Revising agencies' responsibilities when acquiring aircraft parts (section 102–33.110);
11. Clarifying what flight program standards are (section 102–33.140);
12. Clarifying why flight program standards must be established (section 102–33.145);
13. Adding to the procedures and policies required to establish flight program standards (section 102–33.155);
14. Adding administrative personnel to those considered to be flight program personnel (section 102–33.160);
15. Moving operational related procedures from section 102–33.160(c) to section 102–33.165(e);
16. Moving maintenance related procedures from section 102–33.160(d) to section 102–33.170(a);
17. Removing the ''Disclosure Statement for Crewmembers and Qualified Non-Crewmembers Flying on Board Government Aircraft Operated as Public Aircraft,'' currently in section 102–33.165(e), and adding a revised version as Appendix A to part 102–33;
18. Adding ''risk assessment'' as a flight program operational standard (section 102–33.165);
19. Revising who may be considered flight program personnel with regard to training requirements (section 102–33.175);
20. Adding a recommendation that agencies implement a Safety Management System (SMS) standard, including a deadline for recommended implementation of an SMS (section 102–33.180);
21. Adding security program requirements (102–33.180(g));

22. Revising required standards for responding to accidents and incidents (section 102–33.185);
23. Revising how to account for aircraft operation and ownership costs (section 102–33.190);
24. Clarifying that exchange/sale may be considered before disposing of aircraft and aircraft parts, and deleting the requirement to obtain a waiver from GSA (section 102–33.240);
25. Clarifying that operational and non-operational aircraft may be reported as excess or replaced, and deleting the requirement to obtain a waiver from GSA (section 102–33.245);
26. Clarifying that an agency may declassify aircraft (section 102–33.250);
27. Revising the process for reporting excess aircraft (section 102–33.270);
28. Revising what should be considered for the exchange/sale of aircraft, and deleting the requirement to obtain a waiver from GSA (section 102–33.275);
29. Combining the disclaimers found in sections 102–33.285 and 102–33.290 into one section, adding new requirements, and removing section 102–33.290 (section 102–33.285);
30. Revising what needs to be considered before the exchange/sale of aircraft parts (section 102–33.350);
31. Revising the waiver in section 102–33.360;
32. Revising requirements for disposing of military Flight Safety Critical Aircraft Parts (FSCAP) and/or life-limited parts (section 102–33.370);
33. Revising what aircraft information must be reported to GSA, including Unmanned Aircraft Systems, and removing the reference to senior Federal official travel as this is addressed in the Federal Travel Regulation (section 102–33.390);
34. Revising what data are considered Federal Inventory Data and adding that Unmanned Aircraft Systems are included (section 102–33.410);
35. Adding Unmanned Aircraft Systems' cost and utilization data to the types of data reportable to GSA (section 102–33.425);
36. Adding new requirements for performance indicators (sections 102–33.465 through 102–33.475); and
37. Updating and correcting citations and addresses as well as other editorial changes (entire part).

C. Executive Orders 12866 and 13563

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

D. Regulatory Flexibility Act

This rule is not required to be published as a proposed rule. The Administrative Procedure Act, 5 U.S.C. 553(a)(2), excepts matters relating to agency management or personnel or to public property. This FMR final rule concerns matters relating to agency management or personnel or to public property and is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

F. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates to agency management or personnel or to public property.

List of Subjects in 41 CFR Part 102–33

Accounting, Aircraft, Aviation safety. Government property management.

Dated: December 5, 2014.

Dan Tangherlini,

Administrator of General Services.

For the reasons set forth in the preamble, GSA revises 41 CFR part 102–33 to read as follows:

PART 102–33—MANAGEMENT OF GOVERNMENT AIRCRAFT

Subpart A—How These Rules Apply

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Sec.
102–33.5 To whom do these rules apply?
102–33.6 How are the terms ''we,'' ''you,'' ''your,'' and ''our'' used in this part?
102–33.10 May we request approval to deviate from these rules?
102–33.15 How does this part relate to Title 14 of the Code of Federal Regulations?
102–33.20 What definitions apply to this part?

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102–33.25 What are our responsibilities under this part?
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102–33.80 Must we comply with OMB Circular A–76 before we acquire Government aircraft?

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''Management's Accountability and Control,'' for establishing management controls for our aviation program?

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102–33.155 How must we establish Flight Program Standards?

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102–33.160 What standards must we establish or require (contractually, where applicable) for management/administration of our flight program?

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102–33.165 What standards must we establish or require (contractually, where applicable) for operation of our flight program?

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102–33.170 What standards must we establish or require (contractually, where applicable) for maintenance of our Government aircraft?

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102–33.240 What must we consider before disposing or replacing aircraft and aircraft parts?
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102–33.255 Must we document FSCAP or life-limited parts installed on aircraft that we will report as excess or replace?
102–33.260 When we report as excess, or replace, an aircraft (including a declassified aircraft), must we report the change in inventory to the Federal Aviation Interactive Reporting System (FAIRS)?

Reporting Excess Federal Aircraft

102–33.265 What must we do with aircraft that are excess to our needs?
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Replacing Aircraft Through Exchange/Sale

102–33.275 What should we consider before replacing our aircraft through an exchange/sale?
102–33.280 What are our options if we need a replacement aircraft?
102–33.285 Do we need to include any special disclaimers in our exchange/sale agreements for non-certificated aircraft or aircraft that we have operated as public aircraft (*i.e.,* not in compliance with 14 CFR)?
102–33.295 May we exchange/sell an aircraft through reimbursable transfer to another executive agency or conduct a negotiated sale at fixed price to a State Agency for Surplus Property (SASP)?

Disposing of Aircraft Parts

102–33.300 What must we consider before disposing of aircraft parts?
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Reporting Excess Aircraft Parts

102–33.330 What must we do with aircraft parts that are excess to our needs?
102–33.335 What are the receiving agency's responsibilities in the transfer of aircraft parts?
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Replacing Aircraft Parts Through Exchange/Sale

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Special Requirements for Disposing of Flight Safety Critical Aircraft Parts (FSCAP) and Life-Limited Parts

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Federal Aviation Interactive Reporting System (FAIRS)

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Federal Aircraft Cost and Utilization Data

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102–33.430 Who must report Federal aircraft cost and utilization data?

Commercial Aviation Services (CAS) Cost and Utilization Data

102–33.435 What CAS cost and utilization data must we report?
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102–33.445 What accident and incident data must we report?
102–33.450 How must we report accident and incident data?

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102–33.465 What is a performance indicator?
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102–33.475 What are some examples of performance indicators that we can use?
Appendix A to Part 102–33—Disclosure Statement for Crewmembers and Qualified Non-Crewmembers Flying on Board Government Aircraft Operated as Public Aircraft

Authority: 40 U.S.C. 121(c); 31 U.S.C. 101 *et seq.;* Reorganization Plan No. 2 of 1970, 35 FR 7959, 3 CFR, 1066–1970 Comp., p. 1070; Executive Order 11541, 35 FR 10737, 3 CFR, 1966–1970 Comp., p. 939; and OMB Circular No. A–126 (Revised May 22, 1992), 57 FR 22150.

Subpart A—How These Rules Apply

General

§ 102–33.5 To whom do these rules apply?

(a) The rules in this part apply to all Federally-funded aviation activities of executive branch agencies of the U.S. Government who use Government aircraft to accomplish their official business, except for the exemptions listed in paragraph (b) of this section.

(b) The rules in this part do not apply to the following:

(1) The Armed Forces, except for:

(i) Section 102–33.25(e) and (g), which concern responsibilities related to the Interagency Committee for Aviation Policy (ICAP); and

(ii) Subpart D of this part, ''Disposing of Government Aircraft and Aircraft Parts.''

(2) The President or Vice President and their offices;

(3) Aircraft when an executive agency provides Government-furnished avionics for commercially owned or privately owned aircraft for the purposes of technology demonstration or testing; and

(4) Privately owned aircraft that agency personnel use for official travel (even though such use is Federally-funded).

§ 102–33.6 How are the terms ''we,'' ''you,'' ''your,'' and ''our'' used in this part?

In this part, ''we'', ''you'', ''your'', and ''our'' refer to agency aviation managers or an executive agency.

§ 102–33.10 May we request approval to deviate from these rules?

(a) You may request approval to deviate from the rules in this part. See §§ 102–2.60 through 102–2.110 of this chapter for guidance on requesting a deviation. In most cases, GSA will respond to your written request within 30 days;

(b) GSA may not grant deviations from the requirements of OMB Circular A–126, ''Improving the Management of Government Aircraft;'' and

(c) You should consult with GSA's Aviation Policy Division before you request a deviation.

§ 102–33.15 How does this part relate to Title 14 of the Code of Federal Regulations?

This part does not supersede any of the regulations in 14 CFR Chapter I, ''Federal Aviation Administration, Department of Transportation.''

§ 102–33.20 What definitions apply to this part?

The following definitions apply to this part:

Acquire means to procure or otherwise obtain personal property, including by lease or rent.

Acquisition date means the date that the acquiring executive agency took responsibility for the aircraft, *e.g.,* received title (through purchase, exchange, or gift), signed a bailment agreement with the Department of Defense (DOD), took physical custody, received a court order, put into operational status an aircraft that is newly manufactured by the agency, or otherwise accepted physical transfer (*e.g.,* in the case of a borrowed aircraft).

Aircraft part means an individual component or an assembly of components that is used on aircraft.

Armed Forces mean the Army, Navy, Air Force, Marine Corps, and Coast Guard, including their regular and Reserve components and members serving without component status. For purposes of this Part, the National Guard is also included in the Armed Forces.

Aviation life support equipment (ALSE) means equipment that protects flight crewmembers and others aboard an aircraft, assisting their safe escape, survival, and recovery during an accident or other emergency.

Aviation Policy Division is a division in the Office of Asset and Transportation Management, Office of Government-wide Policy, GSA. Contact the staff via the Aircraft Management Overview page at *http://www.gsa.gov/aviationpolicy.*

Crewmember means a person assigned to operate or assist in operating an aircraft during flight time. Crewmembers perform duties directly related to the operation of the aircraft (*e.g.,* as pilots, co-pilots, flight engineers, navigators) or duties assisting in operation of the aircraft (*e.g.,* as flight directors, crew chiefs, electronics technicians, mechanics). See also the terms and definitions for ''Qualified non-crewmember'' and ''Passenger'' in this section.

Criticality code means a single digit code that DOD assigns to military Flight Safety Critical Aircraft Parts (FSCAP) (see §§ 102–33.115 and 102–33.370).

Data plate means a fireproof plate that is inscribed with certain information required by 14 CFR part 45 (or for military surplus aircraft, as required by Military Specifications), and secured to an aircraft, aircraft engine, or propeller. The information must be marked by etching, stamping, engraving, or other approved method of fireproof marking. The plate must be attached in such a manner that it is not likely to be defaced or removed during normal service or lost or destroyed in an accident. Data plates are required only on certificated aircraft. However, non-certificated aircraft may also have data plates.

Declassify means to remove a lost, destroyed, or non-operational aircraft from the Federal aircraft inventory. Agencies may declassify only non-operational aircraft that they will retain for ground use only. Agencies must declassify an aircraft following the rules in §§ 102–33.415 and 102–33.420.

Disposal date means the date that the disposing executive agency relinquishes responsibility for an aircraft, for example, when the agency transfers title in the case of an exchange/sale; returns the aircraft to the lessor or bailer; declassifies it (for FAIRS, declassification is considered a ''disposal'' action, even though the agency retains the property); or relinquishes custody to another agency (*i.e.,* in the case of excess (transferred) or surplus (donated or sold) aircraft).

Donated aircraft means an aircraft disposed of as surplus by GSA through donation to a non-Federal government, a tax-exempt nonprofit entity, or other eligible recipient, following the rules in part § 102–37 (some agencies, for example DOD, may have independent donation authority.)

Exchange means to replace personal property by trade or trade-in with the supplier of the replacement property.

Exchange/sale means to exchange or sell non-excess, non-surplus personal property and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of similar property. See 40 U.S.C. 503.

Exclusive use means a condition under which an aircraft is operated for the sole benefit of the U.S. Government.

Executive agency means any executive department or independent

establishment in the executive branch of the United States Government, including any wholly owned Government corporation. See 5 U.S.C. 105.

Federal Acquisition Service (FAS) means a component of GSA. FAS is organized by geographical regions. The FAS Property Management Division in GSA's Pacific Rim Region, 450 Golden Gate Ave., San Francisco, CA 94102–3434, has responsibility for disposing of excess and surplus aircraft.

Federal aircraft means manned or unmanned aircraft that an executive agency owns (*i.e.,* holds title to) or borrows for any length of time. Federal aircraft include—

(1) Bailed aircraft: Federal aircraft that is owned by one executive agency, but is in the custody of and operated by another executive agency under an agreement that may or may not include cost-reimbursement. Bailments are executive agency to executive agency agreements and involve only aircraft, not services;

(2) Borrowed aircraft: Aircraft owned by a non-executive agency and provided to an executive agency for use without compensation. The executive agency operates and maintains the aircraft;

(3) Forfeited aircraft: Aircraft acquired by the Government either by summary process or by order of a court of competent jurisdiction pursuant to any law of the United States;

(4) Loaned aircraft: Federal aircraft owned by an executive agency, but in the custody of a non-executive agency under an agreement that does not include compensation; and

(5) Owned aircraft: An aircraft for which title or rights of title are vested in an executive agency.

Note to definition of Federal aircraft: When an executive agency loans or bails an aircraft that meets the criteria for Federal aircraft, the loaned or bailed aircraft is still considered a Federal aircraft in the owning agency's inventory, except when DOD is the owning agency of a bailed aircraft. In that case, the aircraft is recorded in the inventory of the bailee.

Federal Aviation Interactive Reporting System (FAIRS) is a management information system operated by GSA to collect, maintain, analyze, and report information on Federal aircraft inventories and cost and usage of Federal aircraft and CAS aircraft (and related services) (see §§ 102–33.395 through 102–33.440).

Flight Safety Critical Aircraft Part (FSCAP) means any aircraft part, assembly, or installation containing a critical characteristic whose failure, malfunction, or absence could cause a catastrophic failure resulting in loss or serious damage to the aircraft or an uncommanded engine shutdown resulting in an unsafe condition.

Full service contract means a contractual agreement through which an executive agency acquires an aircraft and related aviation services (*e.g.,* pilot, crew, maintenance, catering) for exclusive use. Aircraft hired under full service contracts are commercial aviation services (CAS), not Federal aircraft, regardless of the length of the contract.

Government aircraft means manned or unmanned aircraft operated for the exclusive use of an executive agency. Government aircraft include—

(1) Federal aircraft (see definition for ''Federal aircraft'' in this section); and

(2) Aircraft hired as commercial aviation services (CAS). CAS include—

(i) Leased aircraft for exclusive use for an agreed upon period of time (The acquiring executive agency operates and maintains the aircraft);

(ii) Capital lease aircraft for which the leasing agency holds an option to take title;

(iii) Charter aircraft for hire under a contractual agreement for one-time exclusive use that specifies performance (The commercial source operates and maintains a charter aircraft);

(iv) Rental aircraft obtained commercially under an agreement in which the executive agency has exclusive use for an agreed upon period of time (The executive agency operates, but does not maintain, a rental aircraft);

(v) Contracting for full services (*i.e.,* aircraft and related aviation services for exclusive use); or

(vi) Obtaining related aviation services (*i.e.,* services but not aircraft) by commercial contract, except those services acquired to support a Federal aircraft.

Governmental function means a Federally-funded activity that an executive agency performs in compliance with its statutory authorities.

Intelligence community means those agencies identified in the National Security Act, 50 U.S.C. 401a(4).

Inter-service support agreement (ISSA) means any agreement between two or more executive agencies (including the Department of Defense) in which one agency consents to perform aviation support services (*e.g.,* providing an aircraft and other aviation services or providing only services) for another agency with or without cost-reimbursement. An executive agency-to-executive agency agreement that involves only the use of an aircraft, not services, is a bailment, not an ISSA.

Life-limited part means any aircraft part that has an established replacement time, inspection interval, or other time-related procedure associated with it. For non-military parts, the FAA specifies life-limited part airworthiness limitations in 14 CFR 21.50, 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, and 35.5, and on product Type Certificate Data Sheets (TCDS). Letters authorizing Technical Standards Orders (TSO) must also note or reference mandatory replacement or inspection of parts.

Military aircraft part means an aircraft part used on an aircraft that was developed by the Armed Forces (whether or not it carries an FAA airworthiness certificate).

Non-operational aircraft means a Federal aircraft that is not safe for flight and, in the owning executive agency's determination, cannot economically be made safe for flight. This definition refers to the aircraft's flight capability, not its mission-support equipment capability. An aircraft that is temporarily out of service for maintenance or repair and can economically be made safe for flight is considered an operational aircraft.

Official Government business in relation to Government aircraft—

(1) Includes, but is not limited to—

(i) Carrying crewmembers, qualified non-crewmembers, and cargo directly required for or associated with performing Governmental functions (including travel-related Governmental functions);

(ii) Carrying passengers authorized to travel on Government aircraft (see OMB Circular A–126); and

(iii) Training pilots and other aviation personnel.

(2) Does not include—

(i) Using Government aircraft for personal or political purposes, except for required use travel and space available travel as defined in OMB Circular A–126; or

(ii) Carrying passengers who are not officially authorized to travel on Government aircraft.

Operational aircraft means a Federal aircraft that is safe for flight or, in the owning executive agency's determination, can economically be made safe for flight. This definition refers to the aircraft's flight capability, not its mission-support capability. An aircraft temporarily out of service for maintenance or repair is considered an operational aircraft.

Original equipment manufacturer (OEM) means the person or company who originally designed, engineered, and manufactured, or who currently holds the data rights to manufacture, a

specific aircraft or aircraft part. Parts produced under a Parts Manufacturer Approval (PMA) are not considered OEM parts, even though they can be acceptable replacement parts for OEM parts.

Passenger means a person flying onboard a Government aircraft who is officially authorized to travel and who is not a crewmember or qualified non-crewmember.

Performance indicator means a quantitative or qualitative term or value for reporting organizational activities and results, generally with respect to achieving specific goals related to outcomes, outputs, efficiency, and inputs. When applied to aircraft, performance indicators typically measure the effectiveness and efficiency of the processes involved with safely delivering aircraft services.

Production approval holder (PAH) means the person or company who holds a Production Certificate (PC), Approved Production Inspection System (APIS), Parts Manufacturer Approval (PMA), or Technical Standards Orders Authorization (TSOA), issued under provisions of 14 CFR part 21, Certification Procedures for Products and Parts, and who controls the design, manufacture, and quality of a specific aircraft part.

Qualified non-crewmember means an individual, other than a member of the crew, aboard an aircraft—

(1) Operated by an United States Government agency in the intelligence community; or

(2) Whose presence is required to perform or is associated with performing the Governmental function for which the aircraft is being operated (Qualified non-crewmembers are not passengers).

Registration mark means the unique identification mark that is assigned by the FAA and displayed on U.S.-registered Government aircraft (except Armed Forces aircraft). Foreign-registered aircraft hired as CAS will carry their national registration markings. Registration markings are commonly referred to as tail numbers.

Related aviation services contract means a commercial contractual agreement through which an executive agency hires aviation services only (not aircraft), *e.g.,* pilot, crew, maintenance, cleaning, dispatching, or catering.

Required use travel means use of a Government aircraft for the travel of an executive agency officer or employee where the use of the Government aircraft is required because of bona fide communications or security need of the agency or exceptional scheduling requirements. Required use travel must be approved as described in OMB Circular A–126.

Risk analysis and management means a systematic process for—

(1) Identifying risks and hazards associated with alternative courses of action involved in an aviation operation;

(2) Choosing from among these alternatives the course(s) of action that will promote optimum aviation safety;

(3) Assessing the likelihood and predicted severity of an injurious mishap within the various courses of action;

(4) Controlling and mitigating identified risks and hazards within the chosen course(s) of action; and

(5) Periodically reviewing the chosen course(s) of action to identify possible emerging risks and hazards.

Safe for flight means approved for flight and refers to an aircraft, aircraft engine, propeller, appliance, or part that has been inspected and certified to meet the requirements of applicable regulations, specifications, or standards. When applied to an aircraft that an executive agency operates under FAA regulations, safe for flight means ''airworthy,'' *i.e.,* the aircraft or related parts meet their design specifications and are in a condition, relative to wear and deterioration, for safe operation. When applied to an aircraft that an executive agency uses, but does not operate under the FAA regulations, safe for flight means a state of compliance with military specifications or the executive agency's own Flight Program Standards, and as approved, inspected, and certified by the agency.

Safety Management System (SMS) means a formal, top-down business-like approach to managing safety risk. It includes systematic procedures, practices, and policies for the management of safety, safety risk management, safety policy, safety assurance, and safety promotion. For more information on SMS, refer to FAA Advisory Circular 120–92, ''Safety Management Systems for Aviation Service Providers.''

Senior Aviation Management Official (SAMO) means the person in an executive agency who is the agency's primary member of the Interagency Committee for Aviation Policy (ICAP). This person must be of appropriate grade and position to represent the agency and promote flight safety and adherence to standards.

Serviceable aircraft part means a part that is safe for flight, can fulfill its operational requirements, and is sufficiently documented to indicate that the part conforms to applicable standards/specifications.

Suspected unapproved part means an aircraft part, component, or material that any person suspects of not meeting the requirements of an ''approved part.'' Approved parts are those that are produced in compliance with 14 CFR part 21, are maintained in compliance with 14 CFR parts 43 and 91, and meet applicable design standards. A part, component, or material may be suspect because of its questionable finish, size, or color; improper (or lack of) identification; incomplete or altered paperwork; or any other questionable indication. See detailed guidance in FAA Advisory Circular 21–29, ''Detecting and Reporting Suspected Unapproved Parts,'' available from the FAA at *http://www.faa.gov.*

Traceable part means an aircraft part whose manufacturer or production approval holder can be identified by documentation, markings/characteristics on the part, or packaging of the part. Non-military parts are traceable if you can establish that the parts were manufactured in accordance with or were previously determined to be airworthy under rules in 14 CFR parts 21 and 43. Possible sources for making a traceability determination could be shipping tickets, bar codes, invoices, parts marking (*e.g.,* PMA, TSO), data plates, serial/part numbers, manufacturing production numbers, maintenance records, work orders, etc.

Training means instruction for all flight program personnel (to include administrative, maintenance and dispatch personnel), which enables them to qualify initially for their positions and to maintain qualification for their positions over time.

Note: This instruction can apply to either public or civil missions as defined in the latest version of the FAA's Advisory Circular for Government aircraft operations.

Unmanned Aircraft Systems (UAS) means an unmanned aircraft and its associated elements related to safe operations, which may include but not be limited to control stations, data communications links, support equipment, payloads, flight termination systems, and launch/recovery equipment. The unmanned aircraft (UA) is the flying component of the system, flown by a pilot via a ground control system, or autonomously through the use of an on-board computer, communication links, and any additional equipment necessary for the unmanned aircraft to operate safely. The Federal Aviation Administration issues either an Airworthiness Directive (AD) or a Certificate of Authorization (COA) for the entire system, not just the flying component of the system. Reporting of

UAS costs and flight hours is only required if the accumulated costs for acquisition and operations meets the agency's threshold for capitalization, and the UAS has a useful life of two years or more.

Unsalvageable aircraft part means an aircraft part that cannot be restored to a condition that is safe for flight because of its age, its physical condition, a non-repairable defect, insufficient documentation, or its non-conformance with applicable standards/specifications.

U.S. Government Aircraft Cost Accounting Guide (CAG) means guidance for the accounting of Government aircraft costs published by GSA and is based on the cost guidance within OMB Circular A–126, OMB Circular A–76, FAIRS, and the U.S. Government Standard General Ledger.

Responsibilities

§ 102–33.25 What are our responsibilities under this part?

Under this part, your responsibilities are to—

(a) Acquire, manage, and dispose of Federal aircraft (see the definition of ''Federal aircraft'' in § 102–33.20) and acquire and manage Commercial Aviation Services (CAS) (see the definition for ''CAS'' in paragraph (2) of the definition of ''Government aircraft'' in § 102–33.20) as safely, efficiently, and effectively as possible consistent with the nature of your agency's aviation missions;

(b) Document and report the—

(1) Types and numbers of your Federal aircraft;

(2) Costs of acquiring and operating Government aircraft;

(3) Amount of time that your agency uses Government aircraft; and

(4) Accidents and incidents involving Government aircraft;

(c) Ensure that your Government aircraft are used only to accomplish your agency's official Government business;

(d) Ensure that all passengers traveling on your agency's Government aircraft are authorized to travel on such aircraft (see OMB Circular A–126);

(e) Appoint (by letter to the Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Government-wide Policy, GSA) a Senior Aviation Management Official (SAMO), who will be your agency's primary member of the ICAP (this paragraph (e) applies to all executive agencies that use aircraft, including the Department of Defense (DOD), the Federal Aviation Administration (FAA), and the National Transportation Safety Board (NTSB), but excludes executive agencies that only hire aircraft occasionally for a specific flight). It is suggested that an agency's SAMO have:

(1) Experience as a pilot or crew member; or

(2) Management experience within an aviation operations management/flight program.

(f) Designate an official (by letter to the Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Government-wide Policy, GSA) to certify the accuracy and completeness of information reported by your agency through FAIRS. (Armed Forces agencies, which include the DOD and the U.S. Coast Guard, are not required to report information to FAIRS.);

(g) Appoint representatives of the agency as members of ICAP subcommittees and working groups;

(h) Ensure that your agency's internal policies and procedures are consistent with the requirements of OMB Circulars A–126, A–76 and A–11, Federal Aviation Administration Advisory Circular 120–92, and this part; and

(i) Ensure that safety and other critical aviation program requirements are satisfied. Executive agencies that only hire aircraft occasionally for specific flights, must either:

(1) Establish an aviation program that complies with the requirements of OMB Circular A–126; or

(2) Hire those aircraft through an agency with a policy-compliant aviation program.

§ 102–33.30 What are the duties of an agency's Senior Aviation Management Official (SAMO)?

The duties of an agency's Senior Aviation Management Official (SAMO) are to—

(a) Represent the agency's views to the ICAP and vote on behalf of the agency as needed;

(b) Contribute technical and operational policy expertise to ICAP deliberations and activities;

(c) Serve as the designated approving official for FAIRS when the agency elects to have one person serve as both the SAMO and the designated official for FAIRS (DOD will not have a designated official for FAIRS); and

(d) Appoint representatives of the agency as members of ICAP subcommittees and working groups.

§ 102–33.35 How can we get help in carrying out our responsibilities?

To get help in carrying out your responsibilities under this part, you may—

(a) Call or write to GSA's Aviation Policy Division (see definition in § 102–33.20); or

(b) Find additional aviation program management information on the Internet at *http://www.gsa.gov/aviationpolicy.*

§ 102–33.40 What are some of GSA's responsibilities for Federal aviation management?

Under OMB Circular A–126, ''Improving the Management and Use of Government Aircraft,'' (*http://www.whitehouse.gov/omb*) GSA's chief responsibilities for Federal aviation management are to maintain—

(a) A single office to carry out Governmentwide responsibilities for Government aircraft management, and publishing that policy;

(b) An interagency committee (*i.e.,* the ICAP), whose members represent the executive agencies that use Government aircraft to conduct their official business (including FAA and NTSB specifically) and advise and consult with GSA on developing policy for managing Government aircraft;

(c) A management information system to collect, analyze, and report information on the inventory, cost, usage, and safety of Government aircraft; and

(d) A set of performance indicators, policy recommendations, and guidance for the procurement, operation, and safety and disposal of Government aircraft.

Note to § 102–33.40: See OMB Circular A–126 (*http://www.whitehouse.gov/omb*) for a complete listing of GSA's responsibilities related to Federal aviation.

Subpart B—Acquiring Government Aircraft and Aircraft Parts

Overview

§ 102–33.50 Under what circumstances may we acquire Government aircraft?

(a) When you meet the requirements for operating an in-house aviation program contained in OMB Circular A–76, ''Performance of Commercial Activities'' and OMB Circular A–11, ''Preparation, Submission, and Execution of the Budget,'' Part 2, ''Preparation and Submission of Budget Estimates,'' Section 25.5, ''Summary of Requirements,'' Table 1, which refers to the Business Case for Acquisition and Maintenance of Aircraft, and Section 51.18, ''Budgeting for the acquisition of capital assets,'' subparagraph (d) (Both circulars are available at *http://www.whitehouse.gov/omb*), you may—

(1) Acquire Federal aircraft when—

(i) Aircraft are the optimum means of supporting your agency's official business;

(ii) You do not have aircraft that can support your agency's official business safely (*e.g.,* in compliance with applicable safety standards and regulations) and cost-effectively;

(iii) No commercial or other Governmental source is available to provide aviation services safely (*i.e.,* in compliance with applicable safety standards and regulations) and cost-effectively; and

(iv) Congress has specifically authorized your agency to purchase, lease, or transfer aircraft and to maintain and operate those aircraft (see 31 U.S.C. 1343);

(2) Acquire Commercial Aviation Services (CAS) when—

(i) Aircraft are the optimum means of supporting your agency's official business; and

(ii) Using commercial aircraft and services is safe (*i.e.,* conforms to applicable laws, safety standards, and regulations) and is more cost effective than using Federal aircraft, aircraft from any other Governmental source, or scheduled air carriers.

(b) When acquiring aircraft, aircraft selection must be based on need, a strong business case, and life-cycle cost analysis, which conform to OMB Circular A–11, ''Preparation, Submission, and Execution of the Budget,'' Part 2, ''Preparation and Submission of Budget Estimates,'' Section 25.5, ''Summary of Requirements,'' Table 1, which refers to the Business Case for Acquisition and Maintenance of Aircraft (*available at http://www.whitehouse.gov/omb*).

§ 102–33.55 Are there restrictions on acquiring Government aircraft?

Yes, you may not acquire—

(a) More aircraft than you need to carry out your official business;

(b) Aircraft of greater size or capacity than you need to perform your Governmental functions cost-effectively; or

(c) Federal aircraft that Congress has not authorized your agency to acquire or Federal aircraft or commercial aircraft and services for which you have not followed the requirements in OMB Circulars A–76 and A–11 (*available at http://www.whitehouse.gov/omb*).

§ 102–33.60 What methods may we use to acquire Government aircraft?

Following the requirements of §§ 102–33.50 and 102–33.55, you (or an internal bureau or sub-agency within your agency) may acquire Government aircraft by means including, but not limited to—

(a) Purchase;

(b) Borrowing from a non-Federal source;

(c) Bailment from another executive agency;

(d) Exchange/sale;

(e) Reimbursable transfer from another executive agency (see §§ 102–36.75 and 102–36.80);

(f) Transfer from another executive agency as approved by GSA;

(g) Reassignment from one internal bureau or subagency to another within your agency;

(h) Transfer of previously forfeited aircraft;

(i) Insurance replacement (*i.e.,* receiving a replacement aircraft);

(j) Capital lease;

(k) Rent or charter;

(l) Contract for full services (*i.e.,* aircraft plus crew and related aviation services) from a commercial source; or

(m) Inter-service support agreements with other executive agencies for aircraft and services.

§ 102–33.65 What is the process for acquiring Government aircraft?

Acquiring Government aircraft, as described in §§ 102–33.70 through 102–33.105, generally follows a three-step process:

(a) Planning;

(b) Budgeting; and

(c) Contracting.

Planning To Acquire Government Aircraft

§ 102–33.70 What directives must we follow when planning to acquire Government aircraft?

When planning to acquire Government aircraft, you must follow the requirements in—

(a) 31 U.S.C. 1343, ''Buying and Leasing Passenger Motor Vehicles and Aircraft'';

(b) OMB Circular A–126, ''Improving the Management and Use of Government Aircraft'' (*http://www.whitehouse.gov/omb*);

(c) OMB Circular A–11, Part 2, Section 25.5, Table 1, Business Case for Acquisition and Maintenance of Aircraft (*http://www.whitehouse.gov/omb*);

(d) OMB Circular A–76, ''Performance of Commercial Activities'' (*http://www.whitehouse.gov/omb*); and

(e) OMB Circular A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs'' (*http://www.whitehouse.gov/omb*).

§ 102–33.75 What other guidance is available to us in planning to acquire Government aircraft?

You can find guidance for acquisition planning in:

(a) The ''Aviation Planning Desk Guide'' (available at *http://www.gsa.gov/aviationpolicy*) and

(b) OMB's ''Capital Programming Guide,'' which is a supplement to OMB Circular A–11 (*http://www.whitehouse.gov/omb*).

OMB Circular A–76

§ 102–33.80 Must we comply with OMB Circular A–76 before we acquire Government aircraft?

Yes, before you acquire Government aircraft, you must comply with OMB Circular A–76 (*http://www.whitehouse.gov/omb*). If you are acquiring Federal aircraft, you must ensure that the private sector cannot provide Government aircraft or related aviation services more cost-effectively than you can provide Federal aircraft and related services.

The Process for Budgeting To Acquire Government Aircraft

§ 102–33.90 What is the process for budgeting to acquire a Federal aircraft (including a Federal aircraft transferred from another executive agency)?

(a) The process for budgeting to acquire a Federal aircraft or to accept a Federal aircraft transferred from another executive agency requires that you have specific authority from Congress in your appropriation, as called for in 31 U.S.C. 1343, to—

(1) Purchase, capital lease, or lease a Federal aircraft and to operate and maintain it; or

(2) Accept a Federal aircraft transferred from another executive agency and to operate and maintain it.

(b) For complete information on budgeting to own Federal aircraft (*i.e.,* large purchase of a capital asset), see OMB Circular A–11, Part 2, Sections 25.1 and 51.18. Also see §§ 102–33.70 and 102–33.75.

§ 102–33.95 What is the process for budgeting to acquire Commercial Aviation Services (CAS)?

Except for leases and capital leases, for which you must have specific Congressional authorization as required by 31 U.S.C. 1343, you may budget to fund your CAS out of your agency's operating budget. Also see §§ 102–33.70 and 102–33.75.

Contracting To Acquire Government Aircraft

§ 102–33.100 What are our responsibilities when contracting to purchase or capital lease a Federal aircraft or to award a CAS contract?

In contracting to purchase or capital lease a Federal aircraft or to award a CAS contract, you must follow the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) unless your agency is exempt from following the FAR.

§ 102–33.105 What minimum requirements must we put into our CAS contracts?

At a minimum, your CAS contracts and agreements must require that any provider of CAS comply with—

(a) Civil standards in 14 CFR that are applicable to the type of operation(s) you are asking the contractor to conduct;

(b) Applicable military standards; or

(c) Your agency's Flight Program Standards (see §§ 102–33.140 through 102–33.185 for the requirements for Flight Program Standards).

Acquiring Aircraft Parts

§ 102–33.110 What are our responsibilities when acquiring aircraft parts?

When acquiring aircraft parts, you must:

(a) Acquire the parts cost-effectively and acquire only what you need;

(b) Inspect and verify that all incoming parts are documented as safe for flight prior to installation;

(c) Obtain all logbooks (if applicable) and maintenance records (for guidance on maintaining records for non-military parts, see Federal Aviation Administration (FAA) Advisory Circular 43–9C, ''Maintenance Records,'' which is available from the FAA at *http://www.faa.gov*);

(d) Plan for adequate storage and protection; and

(e) Refer to FAA Advisory Circular 21–29C, Change (2), ''Detecting and Reporting Suspected Unapproved Parts'' (*http://www.faa.gov*).

§ 102–33.115 Are there requirements for acquiring military Flight Safety Critical Aircraft Parts (FSCAP)?

Yes, when you acquire military Flight Safety Critical Aircraft Parts (FSCAP), you must—

(a) Accept FSCAP only when it is documented or traceable to its original equipment manufacturer. A part's DOD FSCAP Criticality Code should be marked or tagged on the part or appear on its invoice/transfer document (see § 102–33.375 for further explanation of the FSCAP Criticality Codes); and

(b) Not install undocumented, but traceable FSCAP until you have the parts inspected and recertified by the original equipment manufacturer or other FAA-approved facility (see § 102–33.370 on FSCAP and AC 20–142).

§ 102–33.120 Are there requirements for acquiring life-limited parts?

Yes, when you acquire new or used life-limited parts, you must—

(a) Identify and inspect the parts, ensuring that they have civil or military-certified documentation; and

(b) Mutilate and dispose of any expired life-limited parts (see § 102–33.370 on handling life-limited parts).

Subpart C—Managing Government Aircraft and Aircraft Parts

Overview

§ 102–33.125 If we use Federal aircraft, what are our management responsibilities?

If you use Federal aircraft, you are responsible for—

(a) Establishing agency-specific Flight Program Standards, as defined in §§ 102–33.140 through 102–33.185;

(b) Accounting for the cost of acquiring, operating, and supporting your aircraft;

(c) Accounting for the use of your aircraft;

(d) Maintaining and accounting for aircraft parts;

(e) Reporting inventory, cost, and utilization data (for reporting requirements, see subpart E of this part); and

(f) Properly disposing of aircraft and parts following §§ 102–33.240 through 102–33.375.

§ 102–33.130 If we hire CAS, what are our management responsibilities?

If you hire CAS, you are responsible for—

(a) Establishing agency-specific Flight Program Standards, as defined in §§ 102–33.140 through 102–33.185, as applicable, and requiring compliance with these standards in your contracts and agreements;

(b) Accounting for the cost of your aircraft and services hired as CAS;

(c) Accounting for the use of your aircraft hired as CAS; and

(d) Reporting the cost and usage data for your CAS hires (for reporting requirements, see subpart E of this part).

§ 102–33.135 Do we have to follow OMB Circular A–123, ''Management Accountability and Control,'' for establishing management controls for our aviation program?

Yes, you must follow OMB Circular A–123, ''Management's Responsibility for Accountability and Control'' (*http://www.whitehouse.gov/omb*), when establishing management controls for your aviation program. The circular requires that you establish organizations, policies, and procedures to ensure that, among other things, your aviation program achieves its intended results and you use your resources consistently with your agency's missions.

Establishing Flight Program Standards

§ 102–33.140 What are Flight Program Standards?

Flight Program Standards are the minimum requirements that must be incorporated into your flight programs to ensure that your aircraft are operated safely, effectively, and efficiently. These requirements must:

(a) Be specific to your agency's aviation operations, including your CAS;

(b) Meet the requirements identified in §§ 102–33.155 through 102–33.185.

(c) Meet or exceed applicable civil or military rules (in particular 49 U.S.C. 40102(a)(37) and 40125), and applicable FAA regulations); and

(d) Incorporate risk management techniques when civil or military rules do not apply.

§ 102–33.145 Why must we establish Flight Program Standards?

You must establish Flight Program Standards because Title 14 of the Code of Federal Regulations (14 CFR) may not cover or address all aspects of your agency's flight program, such as non-certificated aircraft, high-risk operations, special personnel requirements, etc.

§ 102–33.150 What Federally-funded aviation activities of executive agencies are exempt from establishing Flight Program Standards under this part?

The following Federally-funded activities are exempt from establishing Flight Program Standards under this part:

(a) The Armed Forces (which includes the U.S. Coast Guard);

(b) Agencies in the Intelligence Community; and

(c) Entities outside the executive branch of the Federal Government when using aircraft loaned to them by an executive agency (that is, owned by an executive agency, but operated by and on behalf of the loanee) unless the loanee—

(1) Uses the aircraft to conduct official Government business; or

(2) Is required to follow §§ 102–33.140 through 102–33.185 under a Memorandum of Agreement governing the loan.

§ 102–33.155 How must we establish Flight Program Standards?

To establish Flight Program Standards, you must write, publish (as appropriate), implement, and comply with standards (specific to your agency), which establish or require (contractually, where applicable) policies and procedures for—

(a) Management/administration of your flight program (in this part, ''flight program'' includes CAS contracts);

(b) Operation of your flight program;

(c) Maintenance of your Government aircraft;

(d) Training for your flight program personnel;

(e) Safety of your flight program;

(f) Accident reporting and investigation as appropriate; and

(g) Reporting to FAIRS as required by this part.

Management/Administration

§ 102–33.160 What standards must we establish or require (contractually, where applicable) for management/administration of our flight program?

For management/administration of your flight program, you must establish or require (contractually, where applicable)—

(a) A management structure responsible for the administration, operation, safety, training, maintenance, and financial needs of your aviation operation (including establishing minimum requirements for these items for any commercial contracts); and

(b) Guidance describing the roles, responsibilities, and authorities of your flight program personnel, *e.g.,* managers, pilots and other crewmembers, flight safety personnel, maintenance personnel, administrative personnel and dispatchers.

Operations

§ 102–33.165 What standards must we establish or require (contractually, where applicable) for operation of our flight program?

For operation of your flight program, you must establish or require (contractually, where applicable)—

(a) Basic qualifications and currency requirements for your pilots and other crewmembers, maintenance personnel, administrative personnel and other mission-related personnel;

(b) Limitations on duty time and flight time for pilots and other crewmembers;

(c) Procedures to record and track flight time, duty time, training of crewmembers, and applicable medical requirements;

(d) Compliance with owning-agency or military safety of flight notices and operational bulletins;

(e) Flight-following procedures to notify management and initiate search and rescue operations for lost or downed aircraft;

(f) Dissemination, as your agency determines appropriate, of a disclosure statement to all crewmembers and qualified non-crewmembers who fly aboard your agency's Government aircraft (see Appendix A to this part);

(g) Creation of a manifest, at the origin of each flight, that contains the full names of all persons on board for each leg of flight, a point of contact for each person, and phone numbers for the points of contact;

(h) Documentation of any changes in the manifest by leg, and retention of manifests for two years from the time of flight;

(i) Procedures for reconciling flight manifests with persons actually on board and a method to test those procedures periodically;

(j) At the origin of each flight, preparation of a complete weight and balance computation and a cargo-loading manifest, and retention of this computation and manifest for 30 days from the date of flight;

(k) Appropriate emergency procedures and equipment for specific missions;

(l) Procedures to ensure that required Aviation Life Support Equipment (ALSE) is inspected and serviceable; and

(m) Procedures to implement a ''risk assessment'' before each flight and/or as frequently as necessary that include such items as weather, crew rest, type of flight (low level, Instrument Flight Rules (IFR), night, etc.) crew makeup, etc. This process should be accomplished in accordance with your agency's operations, flight dispatch, or flight following procedures/program.

Maintenance

§ 102–33.170 What standards must we establish or require (contractually, where applicable) for maintenance of our Government aircraft?

For maintenance of your Government aircraft, you must establish or require (contractually, where applicable)—

(a) Procedures to record and track duty time and training of maintenance personnel;

(b) Aircraft maintenance and inspection programs that comply with whichever is most applicable among—

(1) Programs for ex-military aircraft;

(2) Manufacturers' programs;

(3) FAA-approved programs (*i.e.,* following the applicable parts of 14 CFR);

(4) FAA-accepted programs (*i.e.,* those following ICAP guides or similar programs that have been accepted by the FAA); or

(5) Your agency's self-prescribed programs;

(c) Compliance with owning-agency or military safety of flight notices, FAA airworthiness directives, advisory circulars and orders, or mandatory manufacturers' bulletins applicable to the types of aircraft, engines, propellers, and appliances you operate;

(d) Procedures for operating aircraft with inoperable instruments and equipment (*i.e.,* Minimum Equipment Lists and Configuration Deviation Lists);

(e) Technical support, including appropriate engineering documentation and testing, for aircraft, powerplant, propeller, or appliance repairs, modifications, or equipment installations;

(f) A quality control system for acquiring replacements, ensuring that the parts you acquire are suitable replacement parts and have the documentation needed to determine that they are safe for flight and are inspected and tested, as applicable;

(g) Procedures for recording and tracking maintenance actions; inspections; and the flight hours, cycles, and calendar times of life-limited parts and FSCAP; and

(h) The use of alternative aviation fuels in fleet aircraft to the maximum extent possible consistent with the availability of approved alternative fuels and aircraft operating procedures or manuals for those aircraft.

Training

§ 102–33.175 What standards must we establish or require (contractually, where applicable) to train our flight program personnel?

You must establish or require (contractually, where applicable) the following standards to train your flight program personnel—

(a) An instructional program to train your flight program personnel, initially and on a recurrent basis, in their roles, responsibilities, authorities, and in the operational skills relevant to the types of operations that you conduct. Flight program personnel may include, *e.g.,* managers, pilots and other crewmembers, flight safety personnel, maintenance personnel, administrative personnel and dispatchers; and

(b) An instructional program that meets the specific requirements for safety manager training identified in § 102–33.180(a).

Safety

§ 102–33.180 What standards should we establish or require (contractually, where applicable) for aviation safety management?

You should establish or require (contractually, where applicable) the following aviation safety management standards:

(a) By June 30, 2015, a Safety Management System (SMS) that complies with the FAA's current Advisory Circular that addresses Safety

Management Systems (SMS) or an equivalent internationally recognized SMS standard. The SMS should include:

(1) Policies that define clear roles and responsibilities for implementing an SMS. This includes ensuring that senior level management has the ultimate responsibility for your SMS. It also includes appointing members of management as qualified aviation safety managers and safety officers (*i.e.,* individuals who are responsible for an agency's aviation safety program, regardless of title), who should be—

(i) Experienced as pilots, crewmembers, maintenance personnel, or have experience in aviation management or aviation maintenance program management; and

(ii) Graduated or certificated from an aviation safety officer course provided by a recognized training provider and authority in aviation safety before appointment or within one year after appointment; and

(2) A program for preventing accidents, which includes—

(i) Measurable accident prevention procedures (*e.g.,* safety reviews, clear roles and responsibilities, operations and maintenance procedures, pilot and mechanic proficiency evaluations, fire drills, hazard analyses);

(ii) A procedure or system for disseminating accident-prevention information;

(iii) Safety training;

(iv) An aviation safety awards program that includes applying for the annual Federal Aviation Awards as appropriate;

(v) An annual review to ensure compliance with the GSA Gold Standard Program; and

(vi) A safety council or committee (applies to Federal aircraft-owning agencies);

(b) Procedures and processes for risk analysis and risk management that identify and mitigate hazards through formal administrative and engineering controls and provide recommendations to senior level managers for managing risk to an optimum level;

(c) Policies that require the use of independent, unbiased inspectors to verify compliance with the standards called for in this;

(d) Procedures for reporting unsafe operations to agency aviation safety officers and senior aviation safety managers without reprisal;

(e) A system to collect and report information on aircraft accidents and incidents (as required by 49 CFR part 830 and 41 CFR 102–33.445 and 102–33.450);

(f) Policies that identify clear standards for acceptable behavior; and

(g) A security program that includes—

(1) A designated security manager;

(2) A threat assessment process;

(3) Procedures for preventing and deterring unlawful acts;

(4) Procedures for responding to threats and unlawful acts;

(5) Security training for personnel; and

(6) Policies and procedures for a mail security plan that meet the mail security requirements contained in FMR 102–192, ''Mail Management,'' Subpart C, ''Security Requirements for All Agencies,'' §§ 102–192.70 through 102–192.80. Specifically, section 102–192.80 identifies topics that must be addressed in an agency's mail security plan, to include a plan to protect staff and all other occupants of agency facilities from hazards that might be delivered in the mail, which would include an agency's use of aircraft for mail delivery.

§ 102–33.185 What standards must we establish or require (contractually, where applicable) for responding to aircraft accidents and incidents?

You must establish or require (contractually, where applicable) the following standards for responding to aircraft accidents and incidents:

(a) An aircraft accident/incident reporting policy to ensure that you will comply with the National Transportation Safety Board's (NTSB) regulations (located in 49 CFR parts 830 and 831), including notifying NTSB immediately when you have an aircraft accident or an incident as defined in 49 CFR 830.5. In addition, this policy must contain a method of notifying the U.S. General Services Administration of an accident or incident that was reported to the NTSB. Refer to §§ 102–33.445 and 102–33.450 for further information;

(b) An agency, bureau, or field level accident/incident response plan, modeled on the NTSB's ''Federal Plan for Aviation Accidents Involving Aircraft Operated by or Chartered by Federal Agencies,'' and periodic disaster response exercises to test your plan. A copy of the NTSB's plan is available at *http://www.ntsb.gov.* The plan should also refer to or incorporate procedures (as outlined in FAA Advisory Circular 120–92) to identify the potential for accidents or incidents;

(c) Procedures (see 49 CFR 831.11) for participation as a party to NTSB accident or incident investigations involving aircraft that your agency either owns or hires, and for conducting parallel investigations, as appropriate;

(d) Training in investigating accidents/incidents for your agency's personnel who may be asked to participate in NTSB investigations or to conduct a parallel investigation; and

(e) Procedures for disseminating, in the event of an aviation disaster that involves one of your Government aircraft, information about eligibility for benefits contained in the disclosure statement in Appendix A of this part to anyone injured, to the injured or deceased persons' points of contact (listed on the manifest), and to the families of injured or deceased crewmembers and qualified non-crewmembers.

Note to § 102–33.185: This part does not supersede any of the regulations in 49 CFR parts 830 and 831. For definitions of terms and complete regulatory guidance on notifying the NTSB and reporting aircraft accidents and incidents, see 49 CFR parts 830 and 831.

Accounting for the Costs of Government Aircraft

§ 102–33.190 What are the aircraft operations and ownership costs for which we must account?

You must account for the operations and ownership costs of your Government aircraft, including your Unmanned Aircraft Systems (UAS), as described in the ''U.S. Government Aircraft Cost Accounting Guide'' (CAG), available at (*http://www.gsa.gov/aviationpolicy*), which follows OMB Circular A–126 (*http://www.whitehouse.gov/omb*). To account for aircraft costs, you must do at least the following:

(a) Justify acquisitions to support the agency's aviation program;

(b) Justify the use of Government aircraft in lieu of commercially available aircraft, and the use of one Government aircraft in lieu of another;

(c) Develop a variable cost rate for each aircraft or aircraft type (*i.e.,* make and model) in your inventory;

(d) Recover the costs of operating Government aircraft;

(e) Determine the cost effectiveness of various aspects of agency aircraft programs; and

(f) Accumulate aircraft program costs following the procedures defined in the CAG, available at (*http://www.gsa.gov/aviationpolicy*).

§ 102–33.195 Do we need an automated system to account for aircraft costs?

(a) Yes, if you own Federal aircraft or operate bailed aircraft, you must maintain an automated system to account for aircraft costs by collecting the cost data elements required by FAIRS. The functional specifications and data definitions for a FAIRS-

compliant system are described in the ''Common Aviation Management Information Standard'' (C–AMIS), which is available from the Aviation Policy Division. See §§ 102–33.395, 102–33.405, and 102–33.410 for more information on FAIRS, and §§ 102–33.455 and 102–33.460 for more information on C–AMIS.

(b) Agencies that use only CAS aircraft and do not have Federal aircraft must keep records adequate for reporting information through FAIRS, but are not required to have an automated system. See §§ 102–33.435 and 102–33.440 for the information on CAS that you must report through FAIRS.

§ 102–33.200 Must we periodically justify owning and operating Federal aircraft?

Yes, after you have held a Federal aircraft for five years, you must:

(a) Justify owning and operating the aircraft by reviewing your operations and establishing that you have a continuing need for the aircraft, using the procedures required in OMB Circular A–76 and OMB Circular A–11, Part 7, Appendix B, Budgetary treatment of lease-purchases and leases of capital assets; and

(b) Review the continuing need for each of your aircraft and the cost-effectiveness of your aircraft operations as directed by OMB Circulars A–11 and A–76, every five years.

§ 102–33.205 When we use our aircraft to support other executive agencies, must we recover the operating costs?

Yes, you must recover the following:

(a) Under 31 U.S.C. 1535 and other statutes, you may be required to recover the costs of operating aircraft in support of other agencies. Depending on the statutory authorities under which you acquired and operate your aircraft, you will use either of the following two methods for establishing the rates charged for using your aircraft:

(1) The variable cost recovery rate; or

(2) The full cost recovery rate.

(b) See the U.S. Government Aircraft Cost Accounting Guide (CAG) (*http://www.gsa.gov/aviationpolicy*), for the definitions of ''variable cost recovery rate'' and ''full cost recovery rate.''

Accounting for the Use of Government Aircraft

§ 102–33.210 How do we account for the use of our Government aircraft?

To account for the use of Government aircraft, including your Unmanned Aircraft Systems (UAS), you must document all flights and keep this documentation for two years after the date of the flight. For each flight, record the—

(a) Aircraft's registration mark;

(b) Owner and operator (the owner may not be the operator, as is the case when a CAS aircraft, owned commercially, is operated by U.S. Government personnel);

(c) Purpose of the flight (the Governmental function that the aircraft was dispatched to perform);

(d) Departure and destination points;

(e) Flight date(s) and times;

(f) Manifest (see § 102–33.165(g) and (h)); and

(g) Name(s) of the pilot(s) and crewmembers.

§ 102–33.215 May we use Government aircraft to carry passengers?

Yes, you may use Government aircraft to carry passengers with the following restrictions:

(a) You may carry passengers only on aircraft that you operate or require contractually to be operated in accordance with the rules and requirements in 14 CFR; and

(b) For certain kinds of travel, your agency must justify passengers' presence on Government aircraft. See OMB Circular A–126 and the Federal Travel Regulation (FTR) §§ 301–10.260 through 301–10.266, and 301–70.800 through 301–70.808, and 301–70.910 (41 CFR 301–10.260 through 301–10.266, 301–70.800 through 301–70.808, and 301–70.910) for complete information on authorizing travel and analyzing costs before authorizing travel on Government aircraft.

§ 102–33.220 What are the responsibilities of our aviation program in justifying the use of a Government aircraft to transport passengers?

After receiving a request from your agency, your aviation program's responsibilities in justifying the use of a Government aircraft to transport passengers are to your travel approving authority:

(a) Cost estimates to assist in determining whether or not use of a Government aircraft to carry passengers is justified. See OMB Circular A–126 (*http://www.whitehouse.gov/omb*) for more information on justifying travel on Government aircraft. See also FTR §§ 301–10.260 through 301–10.266, and 301–70.800 through 301–70.808, and 301–70.910 (41 CFR 301–10.260 through 301–10.266, 301–70.800 through 301–70.808, and 301–70.910) for guidance on estimating the cost of using a Government aircraft. The cost of using a Government aircraft is—

(1) The variable cost of using a Federal aircraft;

(2) The amount your agency will be charged by a CAS provider; or

(3) The variable cost of using an aircraft owned by another agency as reported by the owning agency; and

(b) Information to assist in the analysis of alternatives to travel on Government aircraft. The information must include the following:

(1) If no follow-on trip is scheduled, all time required to position the aircraft to begin the trip and to return the aircraft to its normal base of operations;

(2) If a follow-on trip requires repositioning, the cost for the repositioning should be charged to the associated follow-on trip;

(3) If an aircraft supports a multi-leg trip (a series of flights scheduled sequentially), the use of the aircraft for the total trip may be justified by comparing the total variable cost of the entire trip to the commercial aircraft cost (including charter) for all legs of the trip; and

(4) The use of foreign aircraft as CAS is authorized when the agency has determined that an equivalent level of safety exists as compared to U.S. operations of a like kind. The safety of passengers shall be the overriding consideration for the selection of travel mode when comparing foreign sources of scheduled commercial airlines and CAS.

Managing Aircraft Parts

§ 102–33.225 How must we manage aircraft parts?

You must manage your aircraft parts by maintaining proper storage, protection, maintenance procedures, and records for the parts throughout their life cycles.

§ 102–33.230 May we use military FSCAP on non-military FAA-type certificated Government aircraft?

You may use dual-use military FSCAP on non-military aircraft operated under restricted or standard airworthiness certificates if the parts are inspected and approved for such installation by the FAA. See detailed guidance in FAA Advisory Circular 20–142, Change (1), ''Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts, Engines, and Propellers'' (*http://www.faa.gov*).

§ 102–33.235 What documentation must we maintain for life-limited parts and FSCAP?

For life-limited parts and FSCAP, you must hold and update the documentation that accompanies these parts for as long as you use or store them. When you dispose of life-limited parts or FSCAP, the up-to-date documentation must accompany the parts. (See § 102–33.370.)

Subpart D—Disposing or Replacing of Government Aircraft and Aircraft Parts

Overview

§ 102–33.240 What must we consider before disposing or replacing aircraft and aircraft parts?

Before disposing of aircraft and aircraft parts, you must first determine if the aircraft or parts are excess to your agency's mission or, if your aircraft or parts are not excess, if you will need replacements, as follows:

(a) If your aircraft/parts are . . .	And . . .	Then . . .
No longer needed to perform their mission(s) for your agency, i.e., they are excess to your needs,	You do not need to replace them,	You must report them to GSA as excess property (see 41 CFR 102–36.45(e)).
(b) If your aircraft/parts are . . .	And . . .	Then . . .
No longer suitable, or capable of performing their mission(s) for your agency,	You do need to replace them,	You may consider using the exchange/sale authority (see 41 CFR part 102–39).

§ 102–33.245 May we report as excess, or replace (i.e., by exchange/sale), both operational and non-operational aircraft?

Yes, you may report as excess, or replace both operational and non-operational aircraft by following the rules governing excess personal property and exchange/sale (see 41 CFR parts 102–36 and 102–39, respectively).

§ 102–33.250 May we declassify aircraft?

Yes, you may declassify aircraft (See §§ 102–33.415 and 102–33.420).

(a) A declassified aircraft is no longer considered an aircraft, but may be considered as a group of aircraft parts or other property for ground use only.

(b) You must retain documentation and traceability on all parts that are intended for use as replacement parts on other aircraft. You must carry such ''aircraft parts or other property'' on your property records under the appropriate Federal Supply Classification group(s) (*e.g.,* miscellaneous property).

(c) For disposal of the property remaining after declassification of an aircraft, you must follow the property disposal regulations in 41 CFR parts 102–36, 102–37, 102–38 and 102–39.

§ 102–33.255 Must we document FSCAP or life-limited parts installed on aircraft that we will report as excess or replace?

Yes, you must comply with the documentation procedures described in § 102–33.370 if your aircraft and/or engines contain FSCAP or life-limited parts that you will report as excess or replace.

§ 102–33.260 When we report as excess, or replace, an aircraft (including a declassified aircraft), must we report the change in inventory to the Federal Aviation Interactive Reporting System (FAIRS)?

(a) Yes. When you report as excess or replace an aircraft you must report the change in inventory to FAIRS. For more information see § 102–33.405.

(b) Within 14 calendar days of the date you dispose of the aircraft, you must report—

(1) The disposal method (*e.g.,* reassignment, inter-agency transfer, donation, sale as surplus or scrap, declassification, or exchange/sale);

(2) The disposal date; and

(3) The identity and type of recipient (*e.g.,* State, educational institution, executive agency, commercial vendor).

Reporting Excess Federal Aircraft

§ 102–33.265 What must we do with aircraft that are excess to our needs?

If aircraft are excess to your needs, you must:

(a) Reassign the aircraft within your agency if any of your sub-agencies can use the aircraft; or

(b) Report the aircraft as excess property to GSA (see 41 CFR part 102–36) if none of your sub-agencies can use the aircraft.

§ 102–33.270 What is the process for reporting an excess aircraft?

To report an excess aircraft, you must:

(a) Report electronically to GSA's Federal Disposal System GSAXcess® (*http://gsaxcess.gov*). For information on reporting excess property electronically, contact the Federal Acquisition Service (FAS), Pacific Rim Region (Region 9) at (415) 522–2777; and

(b) Submit a Standard Form (SF) 120, Report of Excess Personal Property (see § 102–2.135), to: General Services Administration, Federal Acquisition Service, Pacific Rim Region, 450 Golden Gate Avenue, 4th Floor West, San Francisco, CA, 94102–3434.

Replacing Aircraft Through Exchange/Sale

§ 102–33.275 What should we consider before replacing our aircraft through exchange/sale?

Before an exchange/sale of your aircraft, you should consider whether:

(a) You have a continuing need for similar property and that the property being exchanged or sold is not excess or surplus; and

(b) The exchange/sale meets all other requirements in 41 CFR part 102–39.

§ 102–33.280 What are our options if we need a replacement aircraft?

If you need to replace an aircraft, your options are—

(a) Negotiating and conducting an exchange transaction directly with an aircraft provider and obtaining credit toward the purchase of a replacement aircraft, following the procurement rules applicable to your agency; or

(b) Selling the aircraft and using the proceeds to offset the cost of purchasing a replacement aircraft, following 41 CFR part 102–39. Sales Centers (SC) that are currently authorized to conduct sales, as well as contact information for the GovSales Program Manager, are available on the GovSales Web site at *http://www.gsa.gov/portal/content/105020.*

§ 102–33.285 Do we need to include any special disclaimers in our exchange/sale agreements for non-certificated aircraft or aircraft that we have operated as public aircraft (i.e., not in compliance with 14 CFR)?

Yes, when you exchange/sell non-certificated aircraft or aircraft maintained as public aircraft, you must ensure that the exchange/sale offerings contain the following statement:

''*Warning to purchasers/recipients.* The aircraft you are purchasing or receiving in an exchange may not be in

compliance with applicable Federal Aviation Administration (FAA) requirements. You are solely responsible for bringing the aircraft into compliance with 14 CFR Chapter I, or other applicable standards, by obtaining all necessary FAA inspections or modifications.

The purchaser/recipient agrees that the Government shall not be held liable for personal injuries to, disabilities of, or death of the purchaser/recipient, the purchaser's/recipient's employees, or to any other persons arising from or incident to the purchase of this aircraft, its use, or disposition. You will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the purchase, use, or resale of this item. This aircraft may have been operated outside the limitations of 14 CFR Chapter I, and some type of inspection may be needed to determine its airworthiness prior to being flown. You should be aware of the items below prior to operating this aircraft.

- All civil and public aircraft must have a valid registration issued by the FAA as required by 14 CFR Chapter I.
- Civil aircraft must have a valid airworthiness certificate in order to operate in the U.S. airspace.
- In order for the aircraft to be eligible for a standard airworthiness certificate, the aircraft must conform to its FAA Type Certificate.
- Aircraft not having a valid airworthiness certificate may be eligible for a special FAA one-time flight permit to enable relocating the aircraft. Relocation can be for a number of reasons, including storage, repair, inspection, or public display. Any one-time flight approval is predicated on the aircraft being safe for flight.
- Individuals who purchase a surplus military (foreign or domestic) or foreign aircraft not having any type of FAA Type Certificate may be unable to obtain any type of airworthiness certificate or special flight permit.
- An aircraft with good maintenance and inspection records makes an airworthiness determination easier to ascertain. It is in your best interest to contact the nearest FAA Flight Standards District Office and discuss your responsibilities with respect to gaining an airworthiness determination. The location of your nearest FAA office may be obtained from the FAA's Web site (*http://www.faa.gov/*).
- When the aircraft is purchased for spare parts and the airframe is scrapped, you should declassify the aircraft (see § 102–33.420 for more information), complete the back of the aircraft's registration form and send it to: The FAA Aircraft Registration Branch, P.O. Box 25504, Oklahoma City, OK 73125–0504.''

§ 102–33.295 May we exchange/sell an aircraft through reimbursable transfer to another executive agency or conduct a negotiated sale at fixed price to a State Agency for Surplus Property (SASP)?

Yes, you may exchange/sell an aircraft through reimbursable transfer to another executive agency or conduct a negotiated sale at fixed price to a State Agency for Surplus Property (SASP) (see § 102–39.55 for more information).

Note to § 102–33.295: Some agencies may also have special congressional authorization to recover costs.

Disposing of Aircraft Parts

§ 102–33.300 What must we consider before disposing of aircraft parts?

Before disposing of aircraft parts, you must first determine if they are excess to your agency's mission requirements or, if the aircraft parts are not excess, if you will need replacements. The table in § 102–33.240 shows the differences between excess and replacement parts.

§ 102–33.305 May we report as excess, or replace, FSCAP and life-limited parts?

Yes, you may report as excess, or replace, FSCAP and life-limited parts, but they require special handling. See the tables in § 102–33.370.

§ 102–33.310 May we report as excess, or replace, unsalvageable aircraft parts?

No, you may not report unsalvageable aircraft parts as excess or exchange/sale them for replacements. You must mutilate unsalvageable parts. You may sell the mutilated parts only as scrap or report that scrap to GSA for sale.

§ 102–33.315 What are the procedures for mutilating unsalvageable aircraft parts?

When mutilating unsalvageable aircraft parts, you must—

(a) Destroy the data plates, remove the serial/lot/part numbers, and cut, crush, grind, melt, burn, or use other means to prevent the parts from being misidentified or used as serviceable aircraft parts. Call your regional FAA Flight Standards District Office for additional guidance;

(b) Ensure that an authorized official of your agency witnesses and documents the mutilation; and

(c) Retain a signed certification and statement of mutilation.

§ 102–33.320 What must we do if we are unable to perform required mutilation of aircraft parts?

If you are unable to perform the required mutilation of aircraft parts, you must turn the parts in to a Federal or Federally-approved facility for mutilation and proper disposition. Ensure that any contractor follows the provisions of § 102–33.315 for mutilating and disposing of the parts.

§ 102–33.325 What documentation must we furnish with excess, surplus or replaced parts when they are transferred, donated, or exchanged/sold?

When you transfer, donate, or exchange/sell excess, surplus or replaced parts, you must—

(a) Furnish all applicable labels, tags, and historical and modification records for serviceable aircraft parts;

(b) Mark mutilated parts as unsalvageable (mutilated parts may be sold only for scrap; see § 102–33.315); and

(c) Ensure that all available tags, labels, applicable historical data, life-histories, and maintenance records accompany FSCAP and life-limited parts and that FSCAP criticality codes (see § 102–33.375) are perpetuated on documentation (see § 102–33.330 for additional requirements).

Reporting Excess Aircraft Parts

§ 102–33.330 What must we do with aircraft parts that are excess to our needs?

If aircraft parts are excess to your needs, you must:

(a) Reassign the aircraft parts within your agency if any of your sub-agencies can use the parts; or

(b) Report the excess parts to GSA, using Standard Form (SF) 120, ''Report of Excess Personal Property'' (see § 102–2.135 for information to obtain this form). When reporting excess FSCAP, you must include the manufacturer's name, date of manufacture, part number, serial number, and the appropriate Criticality Code on the SF 120. For information on reporting excess property, refer to *http://gsaxcess.gov.* (See 41 CFR part 102–36 regarding disposal of excess property.)

§ 102–33.335 What are the receiving agency's responsibilities in the transfer of aircraft parts?

An agency that receives transferred aircraft parts must:

(a) Verify that all applicable labels and tags and historical and modification records accompany all serviceable aircraft parts (*i.e.,* parts that are intended for flight use) that you receive. This requirement does not apply to parts for ground use only. See the tables in § 102–33.370.

(b) Mutilate all transferred parts that you discover to be unsalvageable, and dispose of them properly, following the procedures in § 102–33.315.

§ 102–33.340 What are GSA's responsibilities in disposing of excess and surplus aircraft parts?

In disposing of excess aircraft parts, the GSA FAS office in your region:

(a) Reviews your SF 120, Report of Excess Personal Property (see § 102–2.135 for information to obtain this form) for completeness and accuracy (of status, condition, and FSCAP and demilitarization codes if applicable); and

(b) Ensures that the following certification is included on disposal documents (*e.g.,* transfer orders or purchasers' receipts):

Because of the critical nature of the failure of aircraft parts and the resulting potential safety threat, recipients of aircraft parts must ensure that any parts installed on an aircraft meet applicable Federal Aviation Administration (FAA) requirements and must obtain required certifications. GSA makes no representation as to a part's conformance with the FAA requirements.

§ 102–33.345 What are the responsibilities of a State Agency for Surplus Property (SASP) in the donation of Federal Government aircraft parts?

When a SASP accepts surplus Federal Government aircraft parts for donation, the SASP must:

(a) Review donation and transfer documents for completeness and accuracy, and ensure that the certification in § 102–33.340 is included;

(b) Ensure that when the donee determines the part to be unsalvageable, the donee mutilates the part following the procedures in § 102–33.315; and

(c) Ensure that the donee retains, maintains, and perpetuates all documentation for serviceable parts (parts intended for flight use).

Replacing Aircraft Parts Through Exchange/Sale

§ 102–33.350 What do we need to consider for an exchange/sale of our aircraft parts?

(a) When replacing aircraft parts through exchange/sale you—

(1) Do not need approval from GSA; and

(2) Must follow the provisions of this subpart and part 102–39 of this chapter.

(b) Replacement parts do not have to be for the same type or design of aircraft, but you must use the exchange allowance or sales proceeds to purchase aircraft parts to support your aviation program which meet the ''similarity'' requirement in 41 CFR part 102–39.

§ 102–33.355 May we exchange/sell aircraft parts through a reimbursable transfer to another executive agency or conduct a negotiated sale at fixed price to a State Agency for Surplus Property (SASP)?

Yes, you may exchange/sell aircraft parts through a reimbursable transfer to another executive agency, or conduct a negotiated sale at fixed price to a SASP (see § 102–39.55 for more information).

§ 102–33.360 What is the process for exchanging/selling aircraft parts for replacement?

(a) You or your agent (*i.e.,* another Federal agency or an authorized Sales Center) may transact an exchange/sale directly with a non-Federal source, or do a reimbursable transfer with another executive agency as long as you or your agent—

(1) Follow the provisions in this part and in 41 CFR part 102–39;

(2) Ensure that the applicable labels and tags, historical data and modification records accompany the parts at the time of sale, and that sales offerings on aircraft parts contain the following statement:

''*Warning to purchasers/recipients.* The aircraft parts you are purchasing or receiving in an exchange may not be in compliance with applicable Federal Aviation Administration (FAA) requirements. You are solely responsible for bringing the aircraft into compliance with 14 CFR Chapter I, or other applicable standards, by obtaining all necessary FAA inspections or modifications.''

(3) Ensure that the following certification is signed by the purchaser/recipient and received by the Government before releasing parts to the purchaser/recipient:

''The purchaser/recipient agrees that the Government shall not be held liable for personal injuries to, disabilities of, or death of the purchaser/recipient, the purchaser's/recipient's employees, or to any other persons arising from or incident to the purchase of these aircraft parts, their use, or disposition. The purchaser/recipient shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the purchase, use, or resale of these aircraft parts.

These parts may have been used on aircraft that were operated outside the limitations of 14 CFR Chapter I, and some type of inspection may be needed to determine their airworthiness prior to being used on a recipient aircraft.

You should be aware of the following requirements prior to operating an aircraft with parts received from an exchange.

- All civil and public aircraft must have a valid registration issued by the FAA as required by 14 CFR Chapter I.
- Civil aircraft must have a valid airworthiness certificate in order to operate in U.S. airspace.
- In order for the aircraft to be eligible for a standard airworthiness certificate, the aircraft must conform to its FAA Type Certificate.
- Aircraft not having a valid airworthiness certificate may be eligible for a special FAA one-time flight permit to enable relocating the aircraft. Relocation can be for a number of reasons, perhaps including storage, repair, inspection, or public display. Any one-time flight approval is predicated on the aircraft being safe for flight.
- Individuals who purchase a surplus military (foreign or domestic) or foreign aircraft not having any type of FAA Type Certificate may be unable to obtain any type of airworthiness certificate or special flight permit.
- An aircraft with good maintenance and inspection records makes an airworthiness determination easier to ascertain. It is in your best interest to contact the nearest FAA Flight Standards District Office and discuss your responsibilities with respect to gaining an airworthiness determination. The location of your nearest FAA office may be obtained from the FAA's Web site (*http://www.faa.gov/*).''

(b) Authorized SCs can conduct sales of aircraft parts for you. SCs that are currently authorized to conduct sales, as well as contact information for the GovSales Program Manager, are available on the GovSales Web site at *http://www.gsa.gov/portal/content/105020*.

§ 102–33.365 Must we report exchange/sale of parts to FAIRS?

No, you don't have to report exchange/sale of parts to FAIRS. However, you must report the transactions to GSA as part of your agency's annual report (see 41 CFR part 102–39 Subpart C—Exchange/Sale Methods and Reports).

Special Requirements for Disposing of Flight Safety Critical Aircraft Parts (FSCAP) and Life-Limited Parts

§ 102–33.370 What must we do to dispose of military FSCAP and/or life-limited parts?

To dispose of military FSCAP and/or life-limited parts, you must use the following tables:

(a) Table 1 for disposing of uninstalled FSCAP and/or life-limited parts follows:

TABLE 1 FOR DISPOSING OF UNINSTALLED FSCAP AND/OR LIFE-LIMITED PARTS

(1) If an Uninstalled FSCAP (*i.e.*, not installed in an aircraft or engine)—		
(i) Is documented—	Then	(A) You may exchange/sale it or transfer it to another executive agency under 41 CFR parts 102–36 and 102–39; (B) GSA may donate it for flight use under 41 CFR part 102–37 of this subchapter; or (C) GSA may donate it for ground use only, after you mutilate and mark it, ''FSCAP—NOT AIRWORTHY'' (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(ii) Is undocumented, but traceable to its original equipment manufacturer (OEM) or production approval holder (PAH)—	Then	(A) You may exchange/sell it only to the OEM or PAH under 41 CFR part 102–39; (B) GSA may transfer or donate it for flight use, but only by making it a condition of the transfer or donation agreement that the recipient will have the part inspected, repaired, and certified by the OEM or PAH before putting it into service (Note: You must mark parts individually to ensure that the recipient is aware of the part's service status); or (C) GSA may donate it for ground use only, after you mutilate and mark it, ''FSCAP—NOT AIRWORTHY'' (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(iii) Is undocumented and untraceable, you must mutilate it, and—	Then	(A) GSA may transfer or donate it for ground use only, after you mark it, ''FSCAP—NOT AIRWORTHY'' (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation); or (B) You may sell it only for scrap under §§ 102–33.310 and 102–33.315.
(2) If an uninstalled life-limited part (*i.e.*, not installed in an aircraft or engine)—		
(i) Is documented with service life remaining—	Then	(A) You may exchange/sale it or transfer it to another executive agency under 41 CFR parts 102–36 and 102–39; (B) GSA may donate it for flight use under 41 CFR part 102–37; or (C) GSA may donate it for ground use only, after you mutilate and mark it, ''EXPIRED LIFE-LIMITED—NOT AIRWORTHY'' (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(ii) Is documented with no service life remaining, or undocumented, GSA may not transfer it to another executive agency for flight use—	But	(A) GSA may transfer or donate it for ground use only, after you mutilate and mark it, ''EXPIRED LIFE-LIMITED—NOT AIRWORTHY'' (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation); or (B) You must mutilate it and may sell it only for scrap.

(b) Table 2 for disposing of installed FSCAP and/or life-limited parts follows:

TABLE 2 FOR DISPOSING OF INSTALLED FSCAP AND/OR LIFE-LIMITED PARTS

(1) If a FSCAP and/or life-limited part is installed in an aircraft or an engine, and it—		
(i) Is documented with service life remaining—	Then	(A) You may exchange/sale the aircraft or engine, or GSA may transfer the aircraft or engine to another executive agency under 41 CFR parts 102–36 and 102–39; (B) GSA may donate the aircraft or engine for flight use or ground use.
(ii) Is documented with no service life remaining—	Then	(A) You must remove and mutilate the part before you exchange/sale the aircraft or engine (see rules for disposing of uninstalled life-limited parts in Table 1 of this section). (Note: If an aircraft or engine is exchanged/sold to its OEM or PAH, you do not have to remove the expired life-limited part); (B) You must remove and mutilate the part before GSA may transfer or donate the aircraft or engine for flight use (see the rules for disposing of uninstalled FSCAP in Table 1 of this section). (Note: An internal engine part may be left installed, if you identify the part individually to ensure that the receiving agency is aware of the part's service status and, as a condition of the transfer or donation agreement, the receiving agency agrees to remove and mutilate the part before the engine is put into service. You must certify mutilation for transfers, and the State Agency for Surplus Property must certify that the part has been mutilated for donations); or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate and mark it ''EXPIRED LIFE-LIMITED—NOT AIRWORTHY.'' (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving agency agrees to remove and mutilate the part and mark it, and the State Agency for Surplus Property must certify that the part has been mutilated and marked).

§ 102–33.375 What is a FSCAP Criticality Code?

(a) A FSCAP Criticality Code is a code assigned by DOD to indicate the type of FSCAP: Code ''F'' indicates a standard FSCAP; Code ''E'' indicates a nuclear-hardened FSCAP.

(b) You must perpetuate a FSCAP Criticality Code on all property records and reports of excess. If the code is not annotated on the transfer document that you received when you acquired the part, you may contact the appropriate military service or query DOD's Federal Logistics Information System (FLIS) using the National Stock Number (NSN) or the part number (see *http://www.dlis.dla.mil/webflis*). For assistance in subscribing to the FLIS service, contact the WebFLIS Consumer Support Office, 1–877–352–2255.

Subpart E—Reporting Information on Government Aircraft

Overview

§ 102–33.380 Who must report information to GSA on Government aircraft?

You must report information to GSA on Government aircraft if your agency—

(a) Is an executive agency of the United States Government; and

(b) Owns, bails, borrows, loans, leases, rents, charters, or contracts for (or obtains by ISSA) Government aircraft.

§ 102–33.385 What Federally-funded aviation activities of executive agencies are exempt from the requirement to report information to GSA on Government aircraft?

The following Federally-funded activities are exempt from the requirement to report information to GSA on Government aircraft:

(a) The Armed Forces (which includes the U.S. Coast Guard); and

(b) Agencies in the Intelligence Community.

§ 102–33.390 What information must we report on Government aircraft?

You must report the following information to GSA (for information regarding how to report this information, see: *https://gsa.inl.gov/fairs/*):

(a) Inventory data on Federal aircraft, including your Unmanned Aircraft Systems (UAS), through FAIRS;

(b) Cost and utilization data on Federal aircraft, including your Unmanned Aircraft Systems (UAS), through FAIRS;

(c) Cost and utilization data on CAS aircraft and related aviation services (see definition of ''Government aircraft'' for more on CAS), through FAIRS;

(d) Accident and incident data (see § 102–33.445); and

(e) The results of standard competition studies in compliance with OMB Circular A–76 to justify purchasing, leasing, modernizing, replacing, or otherwise acquiring aircraft and related aviation services.

Federal Aviation Interactive Reporting System (FAIRS)

§ 102–33.395 What is FAIRS?

FAIRS is a management information system operated by GSA to collect, maintain, analyze, and report information on Federal aircraft inventories and cost and usage of Federal aircraft and CAS aircraft (and related aviation services). Users access FAIRS through a highly-secure Web site. The U.S. Government Aircraft Cost Accounting Guide (CAG) (see *http://www.gsa.gov/aviationpolicy*) contains the business rules for using the system.

§ 102–33.400 How must we report to FAIRS?

You must report to FAIRS electronically through a secure Web interface to the FAIRS application on the Internet. For additional information see *https://gsa.inl.gov/fairs/*.

§ 102–33.405 When must we report to FAIRS?

(a) You must report any changes in your Federal aircraft inventory within 14 calendar days of those changes.

(b) You must report cost and utilization data to FAIRS at the end of every quarter of the fiscal year (December 31, March 31, June 30, and September 30). However, you may submit your information to FAIRS on a daily, weekly, or monthly basis. To provide enough time to calculate your cost and utilization data, you may report any one quarter's cost and utilization in the following quarter, as follows:

Quarter	Submit
QTR 1—October 1–December 31	Federal inventory for QTR 1. Federal cost and utilization for previous QTR 4. CAS cost and utilization for previous QTR 4.
QTR 2—January 1–March 31	Federal inventory for QTR 2. Federal cost and utilization for QTR 1. CAS cost and utilization for QTR 1.
QTR 3—April 1–June 30	Federal inventory for QTR 3. Federal cost and utilization for QTR 2. CAS cost and utilization for QTR 2.
QTR 4—July 1–September 30	Federal inventory for QTR 4. Federal cost and utilization for QTR 3. CAS cost and utilization for QTR 3.

Federal Inventory Data

§ 102–33.410 What are Federal inventory data?

Federal inventory data includes:

(a) Information on each of the operational and non-operational Federal aircraft that you own, bail, borrow, or loan; and

(b) UAS as described in § 102–33.20.

§ 102–33.415 When may we declassify a Federal aircraft and remove it from our Federal aircraft inventory?

When an aircraft is lost or destroyed, or is otherwise non-operational and you want to retain it, you may declassify it and remove it from your Federal aircraft inventory. For further details, see §§ 102–33.250 and 102–33.420. See §§ 102–33.265 and 102–33.270 for reporting excess Federal aircraft.

§ 102–33.420 How must we declassify a Federal aircraft?

To declassify a Federal aircraft, you must—

(a) Send a letter to the Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Government-wide Policy, General Services Administration, 1800 F St. NW., Washington, DC 20405, that requests approval to declassify the aircraft and states that the aircraft is

non-operational (which includes lost or destroyed). In this letter you must—

(1) Identify the Federal Supply Classification (FSC) group(s) that the declassified aircraft/parts will fall under, if applicable;

(2) Describe the condition of the aircraft (crash-damaged, unrecoverable, parts unavailable, etc.); and

(3) Include photographs as appropriate.

(b) Within 14 calendar days of receiving GSA's approval to declassify the aircraft, following 14 CFR 45.13, request approval from your local FAA Flight Standards District Office (FSDO) to remove the manufacturer's data plate;

(c) Within 14 calendar days of receiving approval from FAA to remove the data plate, inform GSA of FAA's approval, send the data plate by courier or registered mail to the FAA, as directed by your FSDO, and remove the certificate of airworthiness and the aircraft's registration form from the aircraft, complete the reverse side of the registration form, and send both documents to The FAA Aircraft Registration Branch, P.O. Box 25504, Oklahoma City, OK 73125–0504; and

(d) Update the FAIRS inventory record to reflect disposal status and update your personal property records, deleting the declassified aircraft from the aircraft category and adding it to another Federal Supply Classification group or groups, as appropriate.

Federal Aircraft Cost and Utilization Data

§ 102–33.425 What Federal aircraft cost and utilization data must we report?

You must report certain costs for each of your Federal aircraft (including your UAS) and the number of hours that you flew each aircraft. In reporting the costs of your Federal aircraft, you must report both the amounts you paid as Federal costs, which are for services the Government provides, and the amounts you paid for commercial aviation services (CAS) in support of your Federal aviation program. For a list and definitions of the Federal aircraft cost and utilization data elements, see the U.S. Government Aircraft Cost Accounting Guide (CAG), which is available at *http://www.gsa.gov/aviationpolicy.*

§ 102–33.430 Who must report Federal aircraft cost and utilization data?

(a) Executive agencies, except the Armed Forces and agencies in the Intelligence Community, must report Federal cost and utilization data on all Federal aircraft; and

(b) Agencies should report Federal cost and utilization data for loaned aircraft only if Federal money was expended on the aircraft.

Commercial Aviation Services (CAS) Cost and Utilization Data

§ 102–33.435 What CAS cost and utilization data must we report?

You must report:

(a) The costs and flying hours for each CAS aircraft you hire;

(b) The costs and contractual periods for related aviation services that you hire (by contract or through an Inter-service support agreement (ISSA)).

Note to § 102–33.435: You should not report related aviation services that you hire commercially in support of Federal aircraft. ''Federal'' aircraft are by definition owned aircraft. The agency that owns the aircraft is responsible for capturing all cost and utilization data and is required to report this data in GSA's FAIRS. See the U.S. Government Aircraft Cost Accounting Guide (CAG), which is available from GSA at *http://www.gsa.gov/aviationpolicy.*

§ 102–33.440 Who must report CAS cost and utilization data?

Executive agencies, except the Armed Forces and agencies in the Intelligence Community, must report CAS cost and utilization data. You must report CAS cost and utilization data if your agency makes payments to—

(a) Charter or rent aircraft;

(b) Lease or lease-purchase aircraft;

(c) Hire aircraft and related services through an ISSA or a full service contract; or

(d) Obtain related aviation services through an ISSA or by contract except when you use the services in support of Federal aircraft (see the Note at § 102–33.435).

Accident and Incident Data

§ 102–33.445 What accident and incident data must we report?

You must report within 14 calendar days to GSA, Aviation Policy Division, 1800 F St. NW., Washington, DC 20405, all aviation accidents and incidents that your agency is required to report to the NTSB. You may also report other incident information. GSA and the ICAP will use the collected accident/incident information in conjunction with FAIRS' data, such as flying hours and missions, to calculate aviation safety statistics for the Federal aviation community and to share safety lessons-learned.

§ 102–33.450 How must we report accident and incident data?

You must report accident and incident data to GSA at *http://www.gsa.gov/aviationpolicy* or call GSA's Aviation Policy Division and report the accident or incident telephonically.

Common Aviation Management Information Standard (C–AMIS)

§ 102–33.455 What is C–AMIS?

The Common Aviation Management Information Standard (C–AMIS) is a guide to assist agencies in developing or modernizing their internal aviation management information systems. C–AMIS includes standard specifications and data definitions related to Federal aviation operations. C–AMIS is jointly written by the ICAP and GSA and available from GSA's Aviation Policy Division.

§ 102–33.460 What is our responsibility in relation to C–AMIS?

If you use a management information system to provide data to FAIRS by batch upload, you are responsible for ensuring that your system is C–AMIS-compliant (see § 102–33.195). For more information on compliance with C–AMIS, contact GSA's Aviation Policy Division at (202) 208–0519 or (202) 997–7274.

Performance Indicators

§ 102–33.465 What is a performance indicator?

In addition to the definition in § 102–33.20, a performance indicator provides information (either qualitative or quantitative) on the extent to which the actual outcome of a policy, program, or initiative achieves the planned outcome.

§ 102–33.470 Must we develop performance indicators?

Yes, your agency must develop performance indicators in order to measure the degree to which key aviation program objectives are achieved. It is suggested that your performance indicators:

(a) Measure the contribution of the aviation program toward the accomplishment of the agency's mission;

(b) Support and justify aviation program budget requests; and

(c) Demonstrate the effectiveness and efficiency of the aviation program's performance.

§ 102–33.475 What are some examples of performance indicators that an agency can use?

Examples of performance indicators include, but are not limited to, a percentage increase or decrease:

(a) Of operations scheduling effectiveness;

(b) Of repeat system discrepancies over a specific period of time;

(c) In logistical response time for returned parts processing over a specified period of time;

(d) In lost man-hours due to personnel injuries;

(e) In aircraft turn-around time;

(f) In fuel expenditures for a given mission, location, or type/model/series of aircraft;

(g) In aircraft availability or non-availability rates;

(h) In full-mission-capable aircraft over a specific time period;

(i) In non-airworthy maintenance;

(j) In maintenance costs per flying hour; or

(k) In variable cost per passenger mile.

Appendix A to Part 102–33—Disclosure Statement for Crewmembers and Qualified Non-Crewmembers Flying on Board Government Aircraft Operated as Public Aircraft

Generally, an aircraft used exclusively for the U.S. Government may be considered a ''public aircraft'' as defined by Public Law 106–181 and 14 CFR Chapter I, provided it is not a Government-owned aircraft transporting passengers or operating for commercial purposes. A public aircraft is not subject to many Federal Aviation Regulations, including requirements relating to aircraft certification, maintenance, and pilot certification. If the aircraft does not qualify as a ''public aircraft'', then it is a civil aircraft and must comply with all Federal Aviation Regulations applicable to civil aircraft. If you have any questions concerning whether a particular flight will be a public aircraft operation or a civil aircraft operation, you should contact the agency sponsor of that flight.

Rights and Benefits

You have certain rights and benefits in the unlikely event you are injured or killed while working aboard a Government-owned or operated aircraft. Federal employees and some private citizens are eligible for workers' compensation benefits under the Federal Employees' Compensation Act (FECA). When FECA applies, it is the sole remedy. For more information about FECA and its coverage, consult with your agency's benefits office or contact the Branch of Technical Assistance at the Department of Labor's Office of Workers' Compensation Programs.

State or Foreign Laws

State or foreign laws may provide for product liability or ''third party'' causes of actions for personal injury or wrongful death. If you have questions about a particular case or believe you have a claim, you should consult with an attorney.

Insurance Policies

Some insurance policies may exclude coverage for injuries or death sustained while working or traveling aboard a Government or military aircraft or while within a combat area. You may wish to check your policy or consult with your insurance provider before your flight. The insurance available to Federal employees through the Federal Employees Group Life Insurance Program does not contain an exclusion of this type.

Victim Rights

If you are the victim of an air disaster resulting from criminal activity, Victim and Witness Specialists from the Federal Bureau of Investigation (FBI) and/or the local U.S. Attorney's Office will keep you or your family informed about the status of the criminal investigation(s) and provide you or your family with information about rights and services, such as crisis intervention, counseling and emotional support. State crime victim compensation may be able to cover crime-related expenses, such as medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. The Office for Victims of Crime (an agency of the Department of Justice) and the U.S. Attorneys Office are authorized by the Antiterrorism Act of 1996 to provide emergency financial assistance to State programs for the benefit of victims of terrorist acts or mass violence.

Federal Employee

If you are injured or killed on the job during the performance of duty, including while traveling or working aboard a Government aircraft or other Government-owned or operated conveyance for official Government business purposes, you and your family are eligible to collect workers' compensation benefits under FECA. You and your family may not file a personal injury or wrongful death suit against the United States or its employees. However, you may have cause of action against potentially liable third parties.

Family Member

You or your qualifying family member must normally also choose between FECA disability or death benefits, and those payable under your retirement system (either the Civil Service Retirement System or the Federal Employees Retirement System). You may choose the benefit that is more favorable to you.

Private Citizen

Even if the Federal Government does not regularly employ you, if you are rendering personal service to the Federal Government on a voluntary basis or for nominal pay, you may be defined as a Federal employee for purposes of FECA. If that is the case, you and your family are eligible to receive workers' compensation benefits under FECA, but may not collect in a personal injury or wrongful death lawsuit against the United States or its employees. You and your family may file suit against potentially liable third parties. Before you board a Government aircraft, you may wish to consult with the department or agency sponsoring the flight to clarify whether you are considered a Federal employee.

If the agency determines that you are not a ''Federal employee,'' you and your family will not be eligible to receive workers' compensation benefits under FECA. If you are onboard the aircraft for purposes of official Government business, you may be eligible for workers' compensation benefits under state law. If an accident occurs within the United States, or its territories, its airspace, or over the high seas, you and your family may claim against the United States under the Federal Tort Claims Act or Suits in Admiralty Act. If you are killed aboard a military aircraft, your family may be eligible to receive compensation under the Military Claims Act, or if you are an inhabitant of a foreign country, under the Foreign Claims Act.

Note to Appendix A to part 102–33: This disclosure statement is not all-inclusive. You should contact your agency's personnel office, or if you are a private citizen, your agency sponsor or point-of-contact for further assistance.

[FR Doc. 2014–29847 Filed 12–22–14; 8:45 am]

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